

Heritage (Partial Cancellation of the Trees of the Former CS&IR Experiment Station) Notice 2025

Notifiable instrument NI2025–328

made under the

Heritage Act 2004, s 44 (Notice of cancellation proposal)

1 Name of instrument

This instrument is the *Heritage (Partial Cancellation of the Trees of the Former CS&IR Experiment Station) Notice 2025*.

2 Commencement

This instrument commences on the day after its notification day.

3 Registration details of the place

The registration details of the place are in the schedule.

4 Proponent's reasons for the cancellation proposal

The proponent's reasons for the cancellation proposal are stated in the schedule.

5 Date the proposal was given to the council

- (1) The proposal was received by the Secretary of the ACT Heritage Council (the *council*) on 23 February 2024.
- (2) The proposal was accepted by the council on 24 June 2025.

6 Invitation to make written comments during public consultation period

- (1) The council invites written comments about the cancellation proposal. Any written comments must be made within 4 weeks after the day this notice is notified.
- (2) Written comments can be provided to the council by the following methods:

(a) mail to:

The Secretary
ACT Heritage Council
GPO Box 158
CANBERRA ACT 2601

(b) email to Heritage.registrations@act.gov.au

(c) Completing the form on the ACT Heritage Register consultation page
[ACT Heritage Register - ACT Government](#)

Dr Mary Clare Swete Kelly
A/g Secretary (as delegate for)
ACT Heritage Council
24 June 2025

Schedule

(See sections 3 and 4)



ACT Heritage Council
AUSTRALIAN CAPITAL TERRITORY
HERITAGE REGISTER
Partial Cancellation Proposal

For the purposes of s44 of the *Heritage Act 2004*, a notice of cancellation proposal has been prepared by the ACT Heritage Council for the following place:

TREES OF THE FORMER CS&IR EXPERIMENT STATION
(PART) BLOCKS 22, 23 and 25 AND SECTION 61, DOWNER

DATE THE PROPOSAL WAS GIVEN TO THE COUNCIL

The proposal was received by the Secretary of the ACT Heritage Council on 23 February 2024.

The proposal was accepted by the council on 24 June 2025.

DATE OF NOTICE OF CANCELLATION PROPOSAL

24 June 2025

Extended Period (if applicable) Start Date _____ End Date _____

Copies of the Register entry and cancellation proposal are available for inspection at ACT Heritage. For further information please contact:

The Secretary
ACT Heritage Council
Heritage.registrations@act.gov.au
or
GPO Box 158
CANBERRA ACT 2601
Telephone 13 22 81

Introduction

This notice of cancellation proposal includes the original registration and the partial cancellation proposal application. The notice is to inform the public of the details and allow them to provide comments for the Council to consider when it makes the decision whether to change the registration details or not.

The partial cancellation proposal seeks to change the allowed tree species along Bradfield Street, Downer to include deciduous trees in the existing Trees of the Former CS&IR Experiment Station registration. The area subject to the partial cancellation proposal is illustrated in *Figure 1* and *Figure 2*.

The Trees of the Former CS&IR Experiment Station along Bradfield Street, planted as a windbreak in the 1940s, consisted of Monterey pine trees. They were recently replanted with Canary Island pines. Residents of the Bradfield apartments raised concerns over future solar access being blocked by the replanted windbreak when the trees eventually matured, and submitted the current partial cancellation asking that the registration be changed to allow for appropriate deciduous trees in lieu of the densely planted evergreen trees.



Figure 1 Trees of the Former CS&IR Experiment Station registration with partial cancellation area detail.



Figure 2 Trees of the Former CS&IR Experiment Station registration with partial cancellation area.

Registration details

This section contains the registration details of the place as required under s44(5)(a) and is reproduced from the existing registration.

Name: Trees of the Former CS&IR Experiment Station

Registration status: Registered 26 June 1998

Location: DOWNER. Swinden Street and verges, being the area to the front property boundaries of Blocks 11-18 Section 42, Blocks 18-33 Section 43, Blocks 23-28 Section 44, Blocks 18-20 Section 34, Blocks 1-12 Section 36 and Blocks 1-15 Section 41. Section 61 and Section 73, being the area bounded to the north by Bradfield Street, to the south by Bonython Street to the east by Frencham Street and to the west by Melba Street.

Description: Swinden Street verges with avenue plantings of eucalypts and Sections 61 and 73 with Monterey pine (*Pinus radiata*), Yellow box, (*Eucalyptus melliodora*), Apple box (*Eucalyptus bridgesiana*) and Californian big tree (*Sequoiadendron giganteum*).

Statement about its heritage significance:

Swinden Street and verges and Sections 61 and 73, Downer are significant as the approach

and hub of the former CS&IR Dickson Experiment Farm which occupied 670 acres of northern Canberra for 25 years from 1940 to 1965. During this time a wide range of agricultural research of Territory and National significance was carried out including research related to wartime and immediate post-war needs.

Swinden Street is characterised by large eucalypt trees which were planted in about 1943 to line the driveway to the Farm. These trees, which are over 50 years old, whilst approaching the end of their effective and safe lives as street trees, continue to contribute through their size and overall form to the streetscape qualities.

The Monterey pine windbreak and other mature tree plantings particularly the Yellow box and Apple box, which lined former roads and the two specimens of Californian big tree, on Sections 61 and 73 date from the early 1940s and are significant landscape elements.

While Monterey pine is a common species in plantation forestry and farm windbreaks, its presence as a windbreak in a suburb is unusual. In landscape terms the windbreak encloses and protects the playing fields and community facilities and provides a delineation between the suburban housing component and the central open space.

The treelined driveway and the administrative and laboratory facilities for the Farm determined the urban plan for the suburb of Downer in the late 1950s.

In social terms the maturity of the shopping centre, which was ‘recycled’ from the Experiment Farm buildings, provides a feeling of maturity in a suburb where all the houses were brand new and the gardens non-existent.

The existing registration is included at [Attachment 1](#).

Proponents’ reasons for the cancellation proposal

This section contains the proponents’ reasons for the cancellation proposal as required under s44(5)(b) and is a summary of the cancellation proposal included at [Attachment 2](#).

The proponents of the partial cancellation argue that the registration should be changed to allow for appropriate deciduous trees in lieu of the densely planted evergreen trees. They argue that this should be allowed because the original heritage values have changed, specifically:

- The nature of the land has changed and the windbreak no longer delineates between suburban housing and the central open space.
- The heritage value of the CS&IR Station are best represented by the former buildings, the open fields of Section 73 Block 2, and the windbreaks along Melba and Bonython Streets.
- The delineation of the CS&IR Experiment Farm is now represented by the footpath between Melba, and Frencham, Streets, along the southern boundary of the Bradfield developments, and the proposed Goodwin Village.
- Over the medium to long term, the trees will become a significant negative landscape element.
- Additionally, changing the registration will be in line with the scientific contributions of the CS&IR legacy by consideration of climate change mitigation and will better

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

align with other ACT Government environmental and planning priorities.

The full cancellation proposal is included at [Attachment 2](#).



ACT Heritage Council

Entry to the ACT Heritage Register

Heritage Act 2004

20080. Trees of the Former CS&IR Experiment Station

Swinden Street and verges, being the area to the front property boundaries of Blocks 11-18

Section 42, Blocks 18-33 Section 43, Blocks 23-28 Section 44, Blocks 18-20 Section 34, Blocks 1-12
Section 36 and Blocks 1-15 Section 41

Section 61 and Section 73, being the area bounded to the north by Bradfield Street, to the south by
Bonython Street to the east by Frencham Street and to the west by Melba Street

DOWNER

This document has been prepared by the ACT Heritage Council.

This entry which was previously part of the old heritage places or the old heritage objects registers (as defined in the ***Heritage Act 2004***), as the case may be, is taken to be registered under the ***Heritage Act 2004***.

Conservation Requirements (including Specific Requirements), as defined under the ***Heritage Act 2004***, that are contained within this document are taken to be Heritage Guidelines applying to this place or object, as the case may be.

Information restricted under ***the old heritage places register or old heritage objects register*** is restricted under the ***Heritage Act 2004***.

Contact: ACT Heritage Council c/o Secretary PO Box 144
Enquiries: phone 02 6207 2164 fax 02 6207 5715

Lyneham ACT 2602
e-mail heritage@act.gov.au



ACT Government



Helpline: 02 6207 9777
Website : www.cmd.act.gov.au E
E-mail: EnvironmentACT@act.gov.au

ACT Heritage Council

ACT Heritage Council

**AUSTRALIAN CAPITAL
TERRITORY INTERIM HERITAGE
PLACES REGISTER**

For the purposes of s. 54(1) of the *Land (Planning and Environment) Act* 1991, a citation for:

**TREES OF THE FORMER COMMONWEALTH SCIENTIFIC & INDUSTRIAL RESEARCH
(CS & IR) DICKSON EXPERIMENT STATION, DOWNER**

has been prepared by the ACT Heritage Council and included in an interim Heritage Places Register. This is pursuant to ACT Heritage Council Resolution No. 45/5 made on 25 May 1998.

Date of gazettal: **26 June 1998**

Enquiries about this place and copies of this citation are available from:

The Secretary
ACT Heritage Council
PO Box 1036
TUGGERANONG ACT 2901

Telephone: (02) 6207 2166 Facsimile: (02) 6207 2200

INTERIM HERITAGE PLACES REGISTER CITATION

**TREES OF THE FORMER COMMONWEALTH SCIENTIFIC & INDUSTRIAL RESEARCH
(CS & IR)
DICKSON EXPERIMENT STATION, DOWNER**

LOCATION OF PLACE:

- **Swinden Street and verges**, being the area to the front property boundaries of Blocks 11-18 Section 42, Blocks 18-33 Section 43, Blocks 23-28 Section 44, Blocks 18-20 Section 34, Blocks 1-12 Section 36 and Blocks 1-15 Section 41, Downer, and
- **Section 61 and Section 73, Downer**, being the area bounded to the north by Bradfield Street, to the south by Bonython Street to the east by Frencham Street and to the west by Melba Street.

(Refer Fig 1)

FEATURES INTRINSIC TO THE HERITAGE SIGNIFICANCE OF THE PLACE:

The features intrinsic to the heritage significance of the place comprise:

- Swinden Street verges with avenue plantings of eucalypts
 - Sections 61 and 73: Monterey pine (*Pinus radiata*), Yellow box, (*Eucalyptus melliodora*), Apple box (*Eucalyptus bridgesiana*) and Californian big tree (*Sequoiadendron giganteum*).
-

STATEMENT OF SIGNIFICANCE:

Swinden Street and verges and Sections 61 and 73, Downer are significant as the approach and hub of the former CS&IR Dickson Experiment Farm which occupied 670 acres of northern Canberra for 25 years from 1940 to 1965. During this time a wide range of agricultural research of Territory and National significance was carried out including research related to wartime and immediate post-war needs.

Swinden Street is characterised by large eucalypt trees which were planted in about 1943 to line the driveway to the Farm. These trees, which are over 50 years old, whilst approaching the end of their effective and safe lives as street trees, continue to contribute through their size and overall form to the streetscape qualities.

The Monterey pine windbreak and other mature tree plantings particularly the Yellow box and Apple box, which lined former roads and the two specimens of Californian big tree, on Sections 61 and 73 date from the early 1940s and are significant landscape elements.

While Monterey pine is a common species in plantation forestry and farm windbreaks, its presence as a windbreak in a suburb is unusual. In landscape terms the windbreak encloses and protects the playing fields and community facilities and provides a delineation between the suburban housing component and the central open space.

The treelined driveway and the administrative and laboratory facilities for the Farm determined the urban plan for the suburb of Downer in the late 1950s.

In social terms the maturity of the shopping centre, which was 'recycled' from the Experiment Farm buildings, provides a feeling of maturity in a suburb where all the houses were brand new and the gardens non-existent.

SPECIFIC REQUIREMENTS:

In accordance with s.54(1) of the *Land (Planning and Environment) Act 1991*, the following requirements are identified as essential to the conservation of the heritage significance of this place. These requirements are prepared to implement the following conservation policy for the place:

The features identified as intrinsic to the significance of the place are to be conserved and appropriately maintained.

Any action affecting the requirements to conserve the heritage significance of this place is development under Part VI of the Land Act and requires approval prior to undertaking the activity. To undertake development without prior approval may constitute an offence.

1. Requirements Relating to the Landscape

- 1.1 Swinden Street and verges shall be retained in present orientation and dimensions.
- 1.2 Swinden Street shall be retained as an avenue with a predominant Australian tree character.
- 1.3 Mature planting on Sections 61 and 73, comprising the Monterey pine, Yellow box, Apple box, and Californian big tree, shall be conserved and fenced off to protect against damage from car parking..

MANAGEMENT RECOMMENDATIONS:

In assessing this place for the interim Heritage Places Register, the Council recommends that a number of actions and activities should be undertaken which will enhance the heritage values of the place. They are made as recommendations and have no legal effect.

- 1. In relation to Swinden Street, an annual assessment by a tree surgeon, of tree health and structural integrity including the inspection of tree crowns, using a travel tower should be undertaken. Any trees found to be structurally unsound should be immediately removed to obviate any risk to the public. In view of the likelihood of the remaining trees (Camden woollybutt) declining and being a safety hazard they should be removed in three stages at 5, 10 and 15 year intervals, commencing with the poorest 30% of trees. They should be replaced with advanced Grey Box or other agreed *Eucalyptus* species, interspersed with Flowering Cherry (*Prunus sp.*). At this stage any earlier plantings of Grey Box showing poor form should also be replaced.

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

2. The plantings on Sections 61 and 73, should be interpreted to the public using signs or other means. These trees should also undergo yearly assessments for health and structural integrity as part of a tree conservation and management programme for the area.
 3. Particular attention should be given to fencing the two Californian big trees in area F and the Monterey Pines adjacent to Bradfield Street to avoid compaction to their root systems from uncontrolled car parking associated with sporting events on the adjacent oval and Scout clubhouse.
-

DOCUMENT HISTORY:

- | | | |
|----|-----------------|--------------------------------------------------------------------------------------------------------------------------------|
| 1 | 22 August 1997 | Draft citation prepared for consideration by the ACT Heritage Council at Meeting 40. |
| 2 | 5 December 1997 | Draft citation released for public comment. |
| 3. | 25 May 1998 | Revised draft citation prepared for consideration for interim Heritage Registration by the ACT Heritage Council at Meeting 45. |
| 4 | 26 June 1998 | Gazetted in an interim Heritage Places Register. |

Attachment

3.1D

AF2014-104 APPLICATION

<i>For ACT Heritage Use Only</i>	
Date received	
File No.	
Database ID	
Date to Council	
Decision date	
Accepted?	

ACT HERITAGE REGISTER— CANCELLATION PROPOSAL *Heritage Act 2004, s43*

The ACT Heritage Register contains details of places and objects of significance to the ACT.

This form is used to make an application proposing that a place or object (or part thereof) registered under the *Heritage Act 2004* cease to be registered.

Any person can request cancellation (or part thereof) of a registered place or object.

In making this application, you are asked to identify the loss of heritage significance of the place or object and provide supporting evidence.

Each cancellation proposal will be publicly notified as well as being provided to each interested person as identified under the *Heritage Act 2004*. A four week period of public consultation will occur.

Any mistakes or omissions in a heritage register entry do not require the use of this form and can be reported directly to ACT Heritage on 13 22 81 or by email to heritage@act.gov.au.

The ACT Heritage Council will notify you as soon as possible about its acceptance or dismissal of this proposal, and progress of associated processes and decisions. The Council may dismiss the proposal if the Council is satisfied on reasonable grounds that the proposal is frivolous, vexatious, misconceived, lacking in substance or not made honestly; or the Council has previously decided not to cancel the registration of the place or object and is satisfied that the proposal shows no substantial new ground for cancellation.

No fee is payable for the request to cancel a registration.

DO YOU REQUIRE MORE INFORMATION OR NEED HELP?

If you need help completing this form, contact ACT Heritage on 13 22 81 or email heritage@act.gov.au. Incomplete or inadequate forms will be returned with feedback.

More information about the ACT Heritage Council, the Heritage Register and the heritage registration and cancellation process is available on the ACT Heritage website at www.environment.act.gov.au/heritage or by contacting ACT Heritage on 13 22 81 or by email at heritage@act.gov.au.

LODGING YOUR FORM

Please send this form

- **by mail to:** The ACT Heritage Council, PO Box 158, Canberra ACT 2601;
- **by hand to:** ACT Heritage, Dame Pattie Menzies House, 16 Challis Street, Dickson ACT
- **by email to:** heritage@act.gov.au

A cancellation proposal will not be accepted unless signed and dated.

01 DETAILS OF PLACE OR OBJECT

[illegible]

Type: natural Aboriginal historic other/combined

Name of place/object: 20080 **Trees** of the Former CS&IR Experiment Station: Entry to the ACT Heritage Register 28 June 1998. Related **Place**: NI 2011-739 Heritage (Decision about Registration for Buildings of the Former CS7IR Experiment Station, Downer.) Notice 2011.

Other names if any:

Location: 19/60/Canberra Central/Downer, and, 19/61/Canberra Central/Downer

Southern side of Bradfield Street, between Frencham, and Melba, Streets, Downer. ACT. 2602

02 YOUR DETAILS

Name: [REDACTED]
Title [REDACTED] *First Name* [REDACTED] *Surname* [REDACTED]

Organisation *Representing [REDACTED] owners of Stage 2 The Bradfield, Bradfield Street, Downer, and [REDACTED] owners of Stage 1 The Bradfield.*

See Attachment: Names and contact details of Co-signatories to this application.

Postal [REDACTED] **Address:** *Bradfield Street, Downer. ACT. 2602*

Telephone: [REDACTED]

Email: [REDACTED]

Do you have any personal association with the place or object? yes no

If **yes**, how would describe yourself:

Owner(s)

03 CANCELLATION PROPOSAL

NO Full cancellation of the Heritage register entry

YES Partial cancellation of the Heritage register entry What features/area are proposed for cancellation?
Please attach a map or list if needed and identify specific features which you believe no longer have heritage significance e.g. interiors, exterior elements, archaeological, landscape or natural features, or objects.

*This application for partial cancellation relates to the (**Trees**) Canary Island pines planted on the southern side of Bradfield Street, between Frencham and Melba, Streets. These trees were planted in lieu of original Monterey pines, formerly planted as a windbreak for the former CS&IR Experiment Station. The trees are covered by the Interim Heritage Register June 1998, and were removed, and subsequently replaced (January 2022) in accordance with the Development Applications. The Trees were previously part of the (**Place**) CS&IR Experiment Station.*

04 LOSS OF HERITAGE SIGNIFICANCE

Details of cancellation proposal (why is it no longer significant?)

You must address the heritage significance criteria identified in the Register Entry

The Statement of Significance is listed in the Interim Heritage Places Register: Trees of the former Commonwealth Scientific & Industrial Research (CS&IR) Dickson Experiment Station, Downer.

*This Partial Cancellation application refers **only** to the Canary island pines planted(in January 2022) along Bradfield Street.*

The register refers to the original Monterey pines as “significant landscape elements”, and “protecting the playing fields and community facilities”, and as providing “a delineation between the suburban housing component and central open space.”

Our application contends that this significance no longer exists, because:.

- Since the building of the Downer Primary School in 1960, the demolition of its re-purposed buildings in 2014, and the subsequent replacement by town houses, apartment block, and proposed Goodwin Village, the specified section of Bradfield Street is an urban development, with no visible relationship to the central rural open space. The latter now remains a feature of Melba, and Bonython, Streets.*
- The heritage value of the former Experiment Station now clearly lies in the heritage of the former buildings (heritage listed in 2011) of the Experiment Station, the open ground of the Downer Ovals, with the existing heritage-listed Monterey pines along Melba and Bonython Streets in their windbreak formation*

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

- *The delineation of the heritage site of the CS&IR Experiment Farm, is now the footpath between Melba, and Frencham, Streets, along the southern boundary of the Bradfield developments, and the proposed Goodwin Village.*
- *In fact, over the medium to long term, the trees will become a significant negative landscape element.*

Additionally, the legacy of the CS&IR, especially its contribution to science, would be better respected by this partial cancellation of the Heritage listing, thereby enabling:

- *The Heritage Council to conform to the new Statement of Expectations expressed by the Minister for Heritage, 2023.*
- *TCCS to replace Canary pines with tree species appropriate to Climate mitigation strategies and other ACT Government policies.*
- *The ACT Government to conform to its Design Standards for Urban Infrastructure (Canary Island pines). The Standard states that Canary Island pines are ‘**not suitable for use as a street tree**’, with flammability, pedestrian, and health, risks noted.*

Arguably, heritage in the now urban environment of Bradfield Street has been overtaken by the clear need for consideration of climate change mitigation in newly built dwellings, where the impact of densely planted evergreen trees on solar access is a necessary consideration. The group of owners are arguing for appropriate deciduous trees in lieu of the densely planted evergreen trees.

05 FURTHER SUPPORTING INFORMATION

Additional attachments can also be provided

Provide any known details for the owner/s, unless same as applicant for cancellation

Is the owner/s aware of the cancellation proposal?

Yes *(But not all. Signatories to this application have advised their respective body corporate committees, the Downer Community Association, and the Goodwin Village, of the intention to submit this application. Previous correspondence from Stage 2 The Bradfield, and the Downer Community Association, is attached.)*

Does the owner/s support the cancellation proposal?

No *(The signatories cannot unequivocally state that **all** owners of Stages 1 & 2 The Bradfield support this application, and Goodwin Village are currently locked in Development Application negotiations. The signatories rely, first, on the direction that “any person can request a cancellation . . .”, and second, on the validity of the argument that we present.)*

Does the owner consent to your providing their personal information? *The personal information of the signatories is provided, with consent.*

If yes, fill in the information below. If no, proceed to the next section

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

Current owner: *All signatories are owners and details are attached.*

Name (attach additional details if multiple owners)

Address:

Postal or Street Address State Postcode

Telephone:

Business Hours After Hours Mobile

Email

Please indicate if any of the following has changed in any substantial way since the Register Entry was notified:

Physical condition: (covering key features and attach photographs)

Trees.

- *The physical condition of the Canary Island pines, planted as replacement heritage trees in 2022, is good.*
- *In contrast, since being heritage listed in the 1998 Interim Register, some 30+ Monterey pines along Melba, and Bonython, Streets have been removed and not replaced. The Specific Requirements of the Register have **not** been adhered to.*
- *We have attached an indicative picture of how the newly planted (January 2022) pines will impact in the future, and a shading pattern image prepared as part of the Goodwin Village DA.*

Place. *The heritage of CS&IR Experiment Station is wonderfully maintained in the retention of the original farm buildings, the Downer Ovals as symbolic of the open rural space of the farm, and similarly, the symbolic windbreak of Monterey pines on two other sides of the ovals' perimeter.*

Damage or destruction that has reduced or diminished its significance:

- *Neither the urbanisation of Bradfield Street, nor the proposition to replace Canary Island pines with appropriate deciduous trees, constitutes 'damage and destruction'.*
- *Bradfield Street, between Frencham, and Melba Streets is a new urban environment, significantly different to, and now separate from, the heritage precinct of the former CS&IR Experiment Farm. A dense evergreen symbolic windbreak in front of an apartment block, loses any semblance of the purpose of the original plantings, and heritage is therefore destroyed. To date, owners have sought the planting of deciduous trees. If this application is successful, TCCS may have different views on the number, and placement, of trees.*

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

- It is paradoxical that given what appears to be a government decision, to remove and not replace original heritage trees, that in 15 years hence, the newly planted Canary Island pines will have outlasted the original pines, and will represent heritage in an inappropriate setting, and obviously out of context.*

Changes of use/ownership or other significant change:

This has been covered in previous comments.

- The change of use from rural to urban, and from government school establishment to private ownership, are significant changes. There is now a significant difference between the urban streetscape of Bradfield Street, and that of Melba, and Bonython, Streets, where the latter streets still retain urban development with the open space heritage of the former Experiment Farm.*
- The other significant change is that of government strategic planning, and policy, with regard to climate change and the need for appropriate sustainable urban planning, integrating landscape and built design, to maximize energy efficiency and reduce carbon emission.*

Supporting Documentation: Please list any further documentation that will support this proposal, e.g. engineering reports, arboricultural reports, heritage surveys, condition assessments, historic documents, maps or photos, written histories, oral histories, assessment reports (include author, date and name), site recording forms for Aboriginal places/objects (contact ACT Heritage for blank forms).

Author/s or Source	Title/Description	Date
<i>Office of the Commissioner for Sustainability and the Environment</i>	<i>Failure of the ACT Heritage Council to consider climate change and environmental sustainability in its decision to re-plant trees at Downer.</i>	<i>June 2022</i>

List all attachments enclosed:

- Brief to ACT Legislative Assembly Standing Committee.*
- Report from Office of Commissioner for Sustainability and Environment.*
- Executive Committee of Stage 2 The Bradfield body corporate to the Minister for Heritage, dated 28 October 2022.*
- Letter of support from Downer Community Association dated 6 June 2022*
- Image showing future proximity of pines to Stage 2 The Bradfield, and to proposed Goodwin Village.
Some imagination required!*
- Image of shading pattern. Bios Goodwin Village DA.*
- Names and contact details of Co-signatories to this application- ■ owners from Stage 2 The Bradfield, ■ owners from Stage 1 The Bradfield.*

06 AUTHORISATION

I wish to have this registration cancelled, in whole or in part as indicated, in accordance with Part 7 of the *Heritage Act 2004*.

The information provided here is accurate to the best of my knowledge and may be made publicly available for the purpose of cancelling the registration of this place or object, unless otherwise indicated.

I understand that giving false or misleading information is a serious offence under the *Criminal Code 2002*.

07 PERSONAL INFORMATION DISCLOSURE STATEMENT

The personal information on this form is provided to the ACT Heritage Council and ACT Environment and Planning Directorate for the purpose of processing your application for cancellation of registration of a heritage place or object. If you do not provide your contact details, the Heritage Council will not be able to process your application. EPD's Information Privacy Policy contains information about how you may access or seek to correct your personal information held by EPD, and how you may complain about an alleged breach of the Territory Privacy Principles. The EPD Information Privacy Policy can be found at www.act.gov.au/epd/information-privacy.

By ticking this box I give my consent for my name / organisation to be disclosed as the applicant for this cancellation proposal.

Signed:

■■■■■■■■■■ ■■■■■■■■■■

(A scan of this page with our signatures is included with attachments to this application)

Date: 21 February 2024

Brief for Standing Committee, Planning, Transport, and City Services e- petition 202-22: Deciduous trees for Bradfield Street, Downer



**The Monterey pines were a windbreak for an experimental farm in a rural environment.
Downer is an urban environment.**

Background

Throughout the planning and Development Application stages for The Bradfield, Bradfield Street, Downer, the community expressed concerns about pine trees being considered as street trees, in the development on the former Downer Primary School site. The two stages of The Bradfield complex were completed in 2020 and 2021.

The issues in this brief have been raised by the contemporary Downer community, and are supported by the Executive Committee of Stage 2, The Bradfield, and the Downer Community Association.

During the planning process, which included tree removal, the Heritage Council determined that the original Monterey pines had to be replaced like-for-like, to mark the heritage of the original CS&IR Experiment Station. Before replanting took place, owners from Stages 1 & 2 of The Bradfield proposed three options (including a deciduous pine option) for deciduous trees, to the Heritage Council. The Council eventually rejected the options, but belatedly allowed ineffectual amendments

to its original determination¹. In oft-used political parlance, the Heritage Council decision, and its subsequent amendments, don't pass the 'pub test'

The issue stands as a case study, throughout which government priorities, and community opinion and attempts to achieve a timely resolution, have been over-ridden, and a Heritage Council decision has prevailed.

The issues

A Heritage Council decision to have evergreen Canary Island pines planted metres in front of a northfacing 3-storey apartment building, fails to acknowledge:

- fundamental architectural design standards for a cool climate environment, a design standard that is almost ingrained for property buyers in Canberra, and one that influenced buying decisions for The Bradfield;
- the priority that the government places on climate action and emissions abatement;
- the significant impact on solar amenity (increased energy costs; decreased natural light) to owners and residents (Attachment 1);
- a current government Urban Design Standard (Attachment 2);
- the fact that heritage is already significantly represented in the precinct.

What is our argument with the planning process, and the Heritage Council's Decision?

- There is no account taken of climate change or energy conservation. The solar amenity of 38 north-facing apartments in Stage 2, The Bradfield, will be impacted, as will that of 8 townhouses in Stage 1, The Bradfield, and that of north-facing apartments in the proposed Goodwin Village, which is Stage 3 of the site redevelopment.
- The heritage of the site dates back to the CS&IR Experiment Station, established in the 1940s, *in a rural environment*. Downer is an urban environment.
- A current government Design Standards for Urban Infrastructure states that Canary Island pines are *not suitable* for urban street planting.

Heritage is already significantly observed in this precinct

The heritage of the CS&IR Experiment Station is already wonderfully retained.

- There are approximately 400 m of original Monterey pines, retaining the heritage windbreak pattern of the original plantings for the Experimental Station. These trees border the Downer ovals - ovals are obviously symbolic of the original rural use.
- Original Experiment Station buildings remain, are in daily use, and the roof design of Stage 2, The Bradfield, complements these buildings.
- There is heritage signage.

¹ Their amendments were to move the trees 3m to the north, and to allow pruning. These amendments were notified after the replacement trees had been planted.

What is this community on about?

- North-facing residents will bear the cost of increased electricity use for heating during winter, because of shading from densely planted evergreen trees close to the building. Deciduous trees are an obvious compromise.
- Arguably, shade in Winter, and pollen in Spring, will have a detrimental impact on health and well-being.
- The Heritage Act (2004) does not make any reference to climate change. It is unlikely to be amended before 2026. The Heritage Council, in adhering to the Act, is therefore both able, and permitted, to ignore climate change in its decision-making.
- The Design Standard for Urban Infrastructure implicitly acknowledges that land use changes. It also points to the flammability risk of pine trees (think the 2003 bushfires in Canberra), and to pedestrian safety risks.
- Our understanding of The Heritage Act (2004) is that ‘interested persons’ can only appeal a Heritage Council decision during the planning processes. It is inequitable that we, as the eventual owners, do not have an avenue for appeal, because we cannot be defined as ‘interested persons’ under the Act.
- This issue crosses several portfolios, but only one Minister (Minister Vassarotti) has engaged with us. Our observation is that consultation and coordination between portfolios is not only lacking, but also allows a convenient, compartmental, approach to responsibility for decision-making
- Existing pine trees along Melba, and Bonython, Streets, reflect the heritage of the site, given that they are around the open oval areas. Even so, the Management Recommendations specified in 1998² have not been implemented - trees have been removed and not replaced, and many current trees are unhealthy³. Our perception is that both the Heritage Council, and the ACT government, have neglected responsibility for these trees, and there can be no confidence that that situation will change.
- The heritage of the CS&IR Experiment Station is well preserved, and obvious, in original Station buildings, remaining original pines, signage, and the design of Buildings 16 and 20 of Stage 2, The Bradfield.

Conclusion

Noting that Standing Committee members are not from the Kurrajong electorate, we would welcome the opportunity to meet the Committee on-site.

² Interim Heritage Register June 1998.

³ At least 20 Monterey pines from around the Downer ovals have been ‘lost’, and not replaced, while at least 10 are in poor condition. These figures do not include trees that will be removed for the proposed Goodwin Village.

The priority that the government places on emissions abatement should be seen to support the axiom of orthodox design (architectural, landscape, town planning) for Southern Hemisphere cold climate design.

We draw the Committee's attention to the following statement by Minister Vassarotti (February 2021):

*"During my time with Community Housing Canberra I learnt about the need to ensure that spaces are designed in a way that has people at the centre. I learnt that connecting with local communities always delivered better outcomes and people who live in places understand the way streets and suburbs work."*⁴

Minister Vassarotti was formerly on the board of Community Housing Canberra, the developer of Stage 2, The Bradfield. The issues that we have raised, clearly reflect her position, as expressed in February 2021. We urge the Standing Committee to support her position now, ahead of any further review, and certainly ahead of legislative change.

In our opinion, there is also conflict of interest between the Minister's portfolio as Minister for Sustainable Building and Construction, and her portfolio as Minister for Heritage. While that is a matter for how portfolios are distributed, it has placed her in a position where, against the odds, heritage has been able to trump sustainable building. Realistically, in the face of the government's climate change strategy, and emissions abatement priorities, sustainable building should take priority and trump heritage.

The proposed extensive review of the Heritage Council should not be a reason to delay a decision on our petition. We have an expectation that elected representatives can effect change, and can do so quickly, especially in this case, where the weight of evidence clearly supports the argument to vary the Heritage Council's decision.

We urge the Committee, in the interests of energy conservation, safety, well-being, and common sense, to recognise that the community is at the centre of the support for this petition, and to recommend to Cabinet that it approve, and fund, deciduous trees for Bradfield Street, in place of what will be dense, evergreen, pine trees.

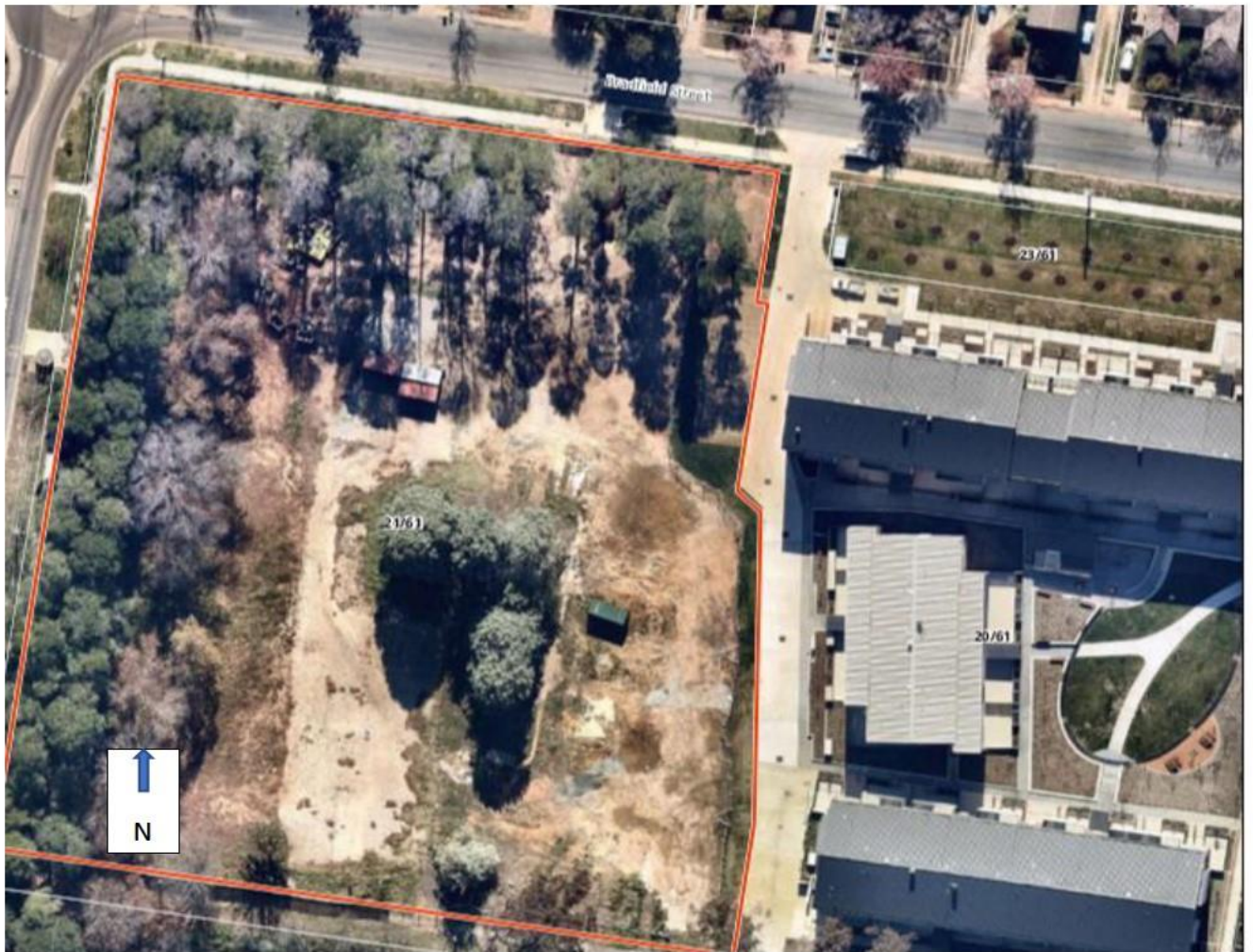
████████████████████(On behalf of 586 petitioners) 12

December 2022

Attachments:


1. Shade pattern of existing pines (image by BIOS)
2. Design Standards for Urban Infrastructure: Canary Island pine.

⁴ https://issuu.com/mba410/docs/mba_canberra_builder_issue_2_2021_web_1_/9



Buildings of Stage 2, The Bradfield are to the right; the vacant land for the proposed Goodwin Village is to the left. The shade pattern of the newly planted Canary Island pines will be similar to that of the original Monterey pines, as shown in the image by Biosis⁵.

⁵ Prepared for Goodwin Village, and used with permission.



ACT
Government
Transport Canberra
and City Services

Design Standards for Urban Infrastructure

Plant Species for Urban Landscape Projects in Canberra

Botanical Name: *Pinus canariensis* (Plc)
Common Name: Canary Island pine

Species Description

- Evergreen
- Tall stately tree with a luxuriant and shady crown
- Beautiful reddish-brown furrowed bark
- Long (15 to 30 centimetres) green to yellow-green needles held in bundles of three
- Insignificant flowers
- Chestnut brown cones 10 to 20 centimetres long

Height and width
25 metres tall by 15 metres wide

Species origin
Canary Islands; introduced into Western gardens in 1888

Landscape use

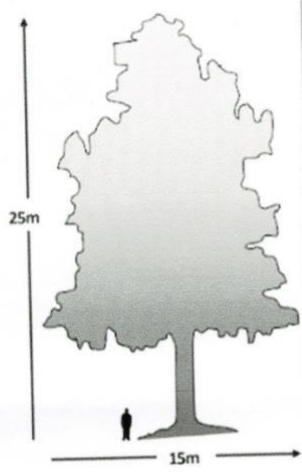
- Available Soil Volume required: $\geq 100\text{m}^3$
- Ideal for windbreaks, amenity and shade planting
- Suitable for use in parks as a specimen tree
- Not suitable for use as a street tree or in home gardens
- Should not be planted near nature reserves, creeks or watercourses

Use considerations

- High frost tolerance to minus 10 degrees Celsius and very high drought tolerance, tolerating much lower levels of rainfall than other pine species
- Suits most soils but prefers well-drained sites
- Prefers full sun
- Medium to long lived
- Slow to moderate growth rate
- Medium to high flammability
- Produces pollen and seeds; attracts birds
- Pruning can renew its crown from epicormic growth
- Cone drop can be a nuisance in pedestrian areas

Examples in Canberra
Numerous examples in parklands in Canberra, with a large specimen at Watson shops

Availability
Commercially available from conifer wholesale nurseries and the NSW Forestry Commission; may require forward ordering





FINAL COMPLAINT REPORT: COMPLAINT
002-2022

Failure of ACT Heritage Council to consider climate change and enviromental sustainability in its decision to re-plant trees at Downer



OFFICE OF THE COMMISSIONER
FOR SUSTAINABILITY AND
THE ENVIRONMENT

Yuma

Dhawura Nguna Dhawura Ngunnawal

Ngunnawalwari dhawurawari Nginggada Dindi

yindumaralidjinyin Dhawura Ngunnawal

yindumaralidjinyin

Hello

This is Ngunnawal Country

We always respect Elders, male and female We
always respect Ngunnawal Country

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Office of the Commissioner for Sustainability and the Environment, 2023,
Failure of ACT Heritage Council to consider climate change and environmental sustainability in its
decision to re-plant trees at Downer, published by the Office of the Commissioner for Sustainability and
the Environment, Canberra, 2023.

This document is available online at www.envcomm.act.gov.au

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Complaint Report Background and Purpose

Purpose of Report

The purpose of this report is to inform the Complainant, the Principal Officers of relevant directorates, and Ministers responsible for relevant portfolios, of the Commissioner for Sustainability and the Environment's (the Commissioner's) findings in relation to the Complaint outlined below.

Status of Report

This report pertains to the Commissioner's functions under Section 12 of the Commissioner for *Sustainability and the Environment Act 1993* (the Act).

This is a non-statutory report. It is not a Special Report as defined under Section 21 of the Act. There is no statutory requirement for this report to be tabled in the Legislative Assembly, or for recommendations to be presented.

Response to Report

As described above, no statutory response is required to this Complaint Report.

ACT Government directorates which have been provided with a copy of the report are encouraged to provide a written response to the Commissioner in relation to those matters which pertain to their portfolio. These will be shared with ministers as appropriate.

The Minister for the Environment may choose to direct the Commissioner to investigate this matter, or related matters raised through this investigation, under Section 21(1)(a) of the Act, which would require the Commissioner to produce a Special Report for the Minister to table in the Legislative Assembly.

Circulation of Report

A copy of this Complaint Report has been provided to:

- Minister for Environment and Heritage
- Minister for Planning
- Minister for City Services
- Director-General of the Environment, Planning and Sustainable Development Directorate
- Director-General of Transport Canberra and City Services
- The Complainant

Notes:

Throughout this report, references to 'heritage' refer strictly to non-Indigenous heritage.

This report uses the terms 'sustainability', 'sustainable development' and 'environment' to refer to broad principles rather than specific matters defined in the Territory Plan and other legislation which makes up the ACT planning system.

1. The Complaint

1.1 Background Information

1.1.1 Information from Complainant

The following information was provided to the Commissioner by the Complainant in support of their submission (note some supplied text not directly related to the substance of the complaint has been omitted from this Report).

I moved into my apartment, a newly built north-facing apartment complex in Bradfield St Downer in June 2021. In late September, I discovered that the empty northern verge awaiting tree planting was to be planted with tall pines. The ACT Heritage Council insists that Canary Island Pines be planted in a windbreak as “like for like” to replace Heritage listed Monterey Pines, planted in the 1940s, and removed as part of the Development approval to make way for medium density housing on site of old Downer Primary School, Bradfield St Downer.

Winter solar loss: *These new evergreen trees, across the north face of apartments and townhouses, will have the impact of reducing winter solar amenity for residents for decades to come, and an eventual adverse impact on rooftop solar. This adverse effect will be extended when similar new pines are planted on the northern aspect of the proposed Goodwin Retirement development.*

This is a different context: *The ‘heritage’ pertains to the CS&IR Experiment Station. The Station was established in a rural/agricultural landscape in the 1940s, which is now both an inner-city, and a medium density, urban environment. Unlike then, climate action is now a local, national, and global emergency.*

Lack of accountability to ACT climate action goals and design standards: *The Heritage Act does not require the Heritage Council to take cognisance of climate change, and current residents are not defined as ‘interested persons’ under the provision of the Act, because they were not around at the time of the Heritage Council’s decision. As a consequence, current affected residents have no right of appeal. The Heritage Council has picked trees that ACT Government Guidelines say are unsuitable for street tree planting. Amendment from the Heritage Council allowing that the windbreak can be relocated approximately 3 metres north is unsatisfactory – it will not address the issue for future residents in any substantial way.*

It’s unnecessary: *There are 400+ metres of original pines along Melba and Bonython Streets. These are around the ovals, which themselves are symbolic of the rural Experiment Station, and this heritage of trees and original CS&IR buildings are still evident – without necessitating planting new pines that will undermine passive-solar design for current and future residents. Existing original pines are poorly maintained. Dead pines have been removed and not replaced and there are a number of distressed trees.*

Contrary to wellbeing: *There are also adverse impacts on wellbeing from evergreen pine trees in this context. Goodwin Village will see an increased number of senior citizens in the area, and pine trees drop cones (a trip hazard); winter sunlight to homes that is beneficial for residents' wellbeing will become blocked; other residents have attested to problematic allergenic impacts from cone pollen from the mature Heritage listed conifers surrounding this site.*

Poor Governance: *Minister Vassarotti says she is unable to intervene, and will note it for future legislative change, yet the ACT Government would have been aware of this conflict of heritage planning and sustainability goals for years, as well as knowledge of climate crisis. Replies to our letters to Ministers and Heritage Council have been exceedingly slow, disjointed across portfolios, and not engaging with our concerns. Residents are left with Minister saying that this will be reviewed for possible legislative change in future, and her office advising us that any retrospective change is unlikely.*

We are arguing that:

- Deciduous trees can be planted in the heritage windbreak pattern, and are an obvious compromise.*
- The Heritage Council must consider the ACT Climate Change Strategy 2019-2025 in its decisions.*
- DAs must allow consequent 'interested persons' to have a right of appeal.*
- Politicians must be able to effect change, and ACT Government able to intervene to ensure statutory bodies can't undermine key environment and sustainability standards and strategies, developed for current and future citizens.*

Actions prior to complaint submission

Before the saplings were planted:

- Other Downer residents were active about tree choices here for years prior. I have an email from a local resident outlining her efforts since 2013, including a survey conducted of Downer residents, "with 80+% opposed to conifers" – this was submitted at Planning phase, to no avail; also, I have copies of correspondence from new townhouse residents in early-mid 2021 to and from Minister Vassarotti requesting change of tree choice.*
- Bradfield Apartment residents moved in mid-2021, shortly followed by Covid lockdown. When we became aware of the intended species planting a group of us wrote to Chief Minister/Minister for Climate Change in October 2021. This was immediately redirected to Minister for Environment and Heritage. We spoke briefly to the Minister in a "Zoom drop in" during Covid lockdown, seeking her assistance. She said neither she nor Chief Minister was able to intervene due to legislation, nor is the matter appealable through ACAT; she said we are free to contact Heritage Council. We wrote again to her office to seek to understand the legislative constraints, and the written reply concluded that their office would note this as a future issue but not take further correspondence from us about this.*

- 18.10.21 – we wrote to the Heritage Council, outcome was an opportunity to meet with Chair via WebEx. Our purpose: hear their response, to seek to understand their conservation goals, and explore compromise options. We submitted a proposal

15.11.21 with compromise win/win options¹. Their response, due mid-December, was released 11.1.22, a day after 21 new Canary pine trees were planted. This Heritage Council response was for an amendment that the trees be relocated 3 meters north, and pruning of lower branches.

Since 21 saplings were planted in front of Bradfield apartments 10 January 2022.

- We contacted Heritage Council staff on 10.1.22 and were told trees could be transplanted and official reply would be released imminently
- We wrote 14.2.22 to key ministers pointing out this issue crossed numerous portfolios, pleading for an integrated response given that climate action is a nominated

top priority for ACT Government; we got belated disjointed replies from Minister Vassarotti's office on 25.3.22 and Minister Gentleman 12.4.22. Min. Gentleman promised follow up by a contact officer. It took our follow up, and numerous pass-ons, to eventually speak with appropriate officer on 7.7.22.

- We met with Downer Community Association in February 2022 – they have since written a letter to Heritage Council noting their support for our concerns, and asking Council to reconsider its decision.
- The pine trees planted in front of Townhouses have been placed in the amended location, so the ones in front of Apartments are not in alignment with these
- We have written again three times since February to the Heritage Council to ask about compliance with their directions of Heritage tree management plan –

no reply still.

- Trees official met with us on site on 7.7.22. She said the Heritage Council amendment had been “overlooked” and that the 21 trees in front of the apartments will be relocated as per the amendment. We acknowledged this in a letter on 11.7.22, asking further questions, and have heard nothing further.
- We commenced an E-petition to Legislative Assembly in July; this is open till 31.10.22.

¹ Note: the alternative tree proposed by The Bradfield residents, the conifer *Metasequoia glyptostroboides*, has been grown in Canberra but was removed from the approved list of trees for public plantings by TCCS in 2021 for its intolerance to drought.

1.1.2 Location of The Bradfield development



Figure 1: Downer development site in March 2018 (Source: ACTmapi)

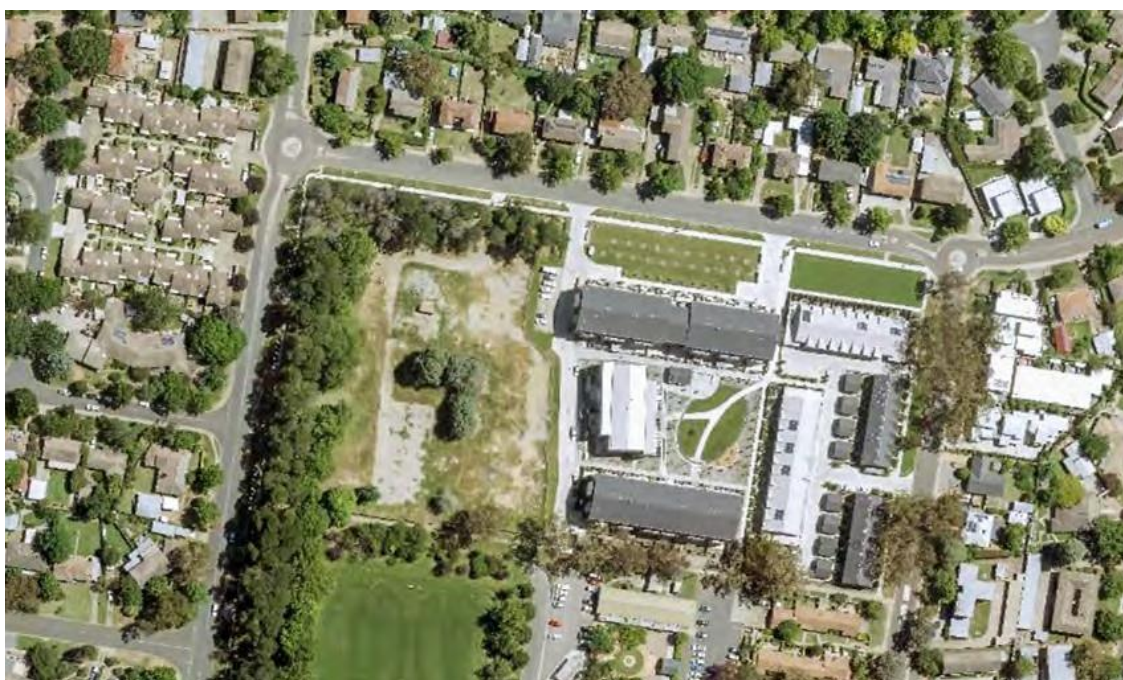


Figure 2: Downer development site in December 2021 (Source: ACTmapi)

1.1.3 Heritage Registration

The *Trees of The Former Commonwealth Scientific & Industrial Research (CS&IR) Dickson Experiment Station* were entered onto the interim Heritage Places Register in 1998.

The entry notes:

*While Monterey pine is a common species in plantation forestry and farm windbreaks, its presence as a windbreak in a suburb is unusual. In landscape terms the windbreak encloses and protects the playing fields and community facilities and provides a delineation between the suburban housing component and the central open space.*²

The citation includes a number of management recommendations including annual inspection of the trees ‘for health and structural integrity’. ACT Heritage has no record that such inspections have ever been undertaken. The citation includes specific recommendations for staged replacement of declining eucalyptus trees which form part of the heritage place but does not include such recommendations for the Monterey Pines.

1.1.4 The Bradfield Development Background

Development of this site has been a prolonged process with a number of related development applications and a Territory Plan Variation. Two Development Applications (DA) relating to site preparation were approved prior to 2017, and both included conditions to protect and retain the heritage trees *in situ*. DA201731204 was submitted in 2017 and ultimately resulted in the construction of The Bradfield apartments.

DA201731204 was made for: *demolition of the remaining site infrastructure and removal of trees; construction of 160 dwellings with garages or basement car parking, landscaping and associated works. Dwellings to be constructed in two stages and comprise 37 townhouses within four 2-storey buildings and 123 apartments within three 4-storey buildings. Works addressing Deed of Agreement requirements including creation of two multi unit residential blocks with heritage listed objects; off-site works; with portion of site to remain under Holding Lease for future development.*

Public notification of DA201731204 took place on 3-26 April 2017 through notices on the site and letters to nearby residents. Eighteen responses were received raising a range of issues, including both support for and against removing the trees. Replacement of the pines with deciduous trees was also suggested by some respondents.

The DA was approved with conditions, one of which was the removal and replacement of the heritage windbreak of Monterey Pines, *Pinus radiata*, with a similarly spaced planting of Canary Island Pines, *Pinus canariensis*.

2 Entry to the ACT Heritage Register, *Trees of the Former CS&IR Experiment Station*, https://www.environment.act.gov.au/data/assets/pdf_file/0009/148338/402.pdf ACT Heritage Council 1998

1.2 Commissioner’s Decision to Investigate the Complaint

Key aspects of the complaint as articulated by the Complainant are:

1. **Winter solar loss:** *These new evergreen trees, across the north face of apartments and townhouses, will have the impact of reducing winter solar amenity for residents for decades to come, and an eventual adverse impact on rooftop solar.*
2. **This is a different context:** *The ‘heritage’ pertains to the CS&IR Experiment Station. The Station was established in a rural/agricultural landscape in the 1940s, which is now both an inner-city, and a medium density, urban environment. Unlike then, climate action is now a local national and global emergency.*
3. **Lack of accountability to ACT climate action goals and design standards:** *The Heritage Act does not require the Heritage Council to take cognisance of climate change. The Heritage Council has picked trees that ACT Government Guidelines say are unsuitable for street tree planting.*
4. **It’s unnecessary:** *There are 400+ metres of original pines along Melba and Bonython Streets. These are around the ovals, which themselves are symbolic of the rural Experiment Station, and this heritage of trees and original CS&IR buildings are still evident without necessitating planting new pines that will undermine passive-solar design for current and future residents. Existing original pines are poorly maintained. Dead pines have been removed and not replaced and there are a number of distressed trees.*
5. **Contrary to wellbeing:** *There are also adverse impacts on wellbeing from evergreen pine trees in this context. Goodwin Village will see an increased number of senior citizens in the area, and pine trees drop cones (a trip hazard); winter sunlight to homes that is beneficial for residents’ wellbeing will become blocked; other residents have attested to problematic allergenic impacts from cone pollen from the mature Heritage listed conifers surrounding this site.*
6. **Poor governance:** *Minister Vassarotti says she is unable to intervene, and will note it for future legislative change, yet the ACT Government would have been aware of this conflict of heritage planning and sustainability goals for years, as well as knowledge of climate crisis. Replies to letters to Ministers and Heritage Council have been exceedingly slow, disjointed across portfolios, and not engaging with our concerns.*

Consideration of the *Commissioner for Sustainability and the Environment Act 1993*

The Commissioner has considered the complaint with regard to the Act, both in relation to its relevance to the CSE’s statutory functions and the circumstances described below. Under the CSE Act, the Commissioner has the discretion not to investigate complaints subject to statutorily defined circumstances.

Consideration of information provided by the Complainant

1. Based on the information provided, the Commissioner is satisfied that the new Canary Island Pines will grow to a height (25m) and thickness (15m)³ that will block solar access to the north-facing development, impacting the passive solar properties of the development and, in the future, solar panel use. This will reduce the environmental sustainability of the development.

2&3. The complaint highlights the apparent subservience of sustainability objectives to heritage objectives inherent in this matter. This appears at odds with the ACT Government's public stance on positive climate action. The primacy of heritage values in the face of a climate emergency appears untested in the ACT.

The species of tree selected for 'like for like' heritage planting, the Canary Island Pine (replacing the original Monterey Pines) is described in City Service's tree guide as 'Not suitable for use as a street tree'⁴.

The Commissioner is satisfied that the apparent conflict between heritage and sustainability in this instance has implications for the environmental management and sustainable development of the city more broadly which merits further investigation.

4. The broader heritage context of the site is outside the scope of the Commissioner's role and is not a basis for this investigation.
5. The indirect wellbeing impacts of the tree species selection is outside the scope of the Commissioner's role and is not a basis for this investigation.

The Commissioner has not pursued an investigation into the dual role of the Minister for Heritage and Minister for Environment. While this dual function resulted in frustrations reported by the Complainant during attempts to resolve the matter, it does not appear to have contributed to the matters raised within the complaint. The conflict of heritage and environment values appears to arise in the Planning domain, as discussed further in this report.

While early discussions with the complainant suggested the substance of the complaint related solely to decisions made by the ACT Heritage Council, the Commissioner's enquiries found that the Planning areas of EPSDD are equally responsible for decisions leading to the situation in Downer which has prompted this complaint being made.

Objects 2B(c) and 2B(e) of the *Commissioner for Sustainability and the Environment Act 1993* are to 'encourage decision-making that facilitates ecologically sustainable development' and 'encourage sound environmental practices and procedures to be adopted by the Territory and territory authorities as a basis for ecologically sustainable development.'

On this basis, the Commissioner determined that the following aspects of the complaint warranted further investigation:

- restricted solar access as a result of the new plantings;
- the unsuitable nature of *Pinus canariensis* for use as street trees; and
- the apparent primacy of non-Indigenous heritage values over environmental and sustainability values.

In line with legislation, the Commissioner's sole focus in investigating this matter is on whether ACT Government decisions and practices supported ecologically sustainable development.

3 Sizes taken from TCCS Municipal Infrastructure Standards 25 https://www.cityservices.act.gov.au/data/assets/pdf_file/0004/1378543/Municipal-Infrastructure-Standards-25-Plant-Species-for-Urban-Landscape-Projects.pdf.

4 https://www.cityservices.act.gov.au/data/assets/pdf_file/0005/1502798/Pinus-canariensis.pdf

1.3 Evidence Submitted to this Investigation

Multiple iterations of documents were submitted for DA201731204 by the proponent, Canberra Housing, in response to multiple rounds of entity advice and feedback to the proponent, and amendments to the planning proposal. Documents provided to this investigation include the file for DA201731204, as well as documents and correspondence from ACT Heritage relating to the Statement of Heritage Effect (SHE) and documents and internal correspondence from the TCCS Urban Treescapes unit. Extensive documentation was also provided by the Complainant.

The Commissioner and her staff held meetings with ACT Government officers from the Planning and Sustainable Development Branch, Urban Treescapes and ACT Heritage.

2. Commissioner's Findings

This investigation found limitations in the development approval process which have the potential for perverse outcomes in terms of sustainable development. In keeping with the Objects of the *Commissioner for Sustainability and the Environment Act 1993*, Parts 2B(c) and 2B(e), the Commissioner's investigations focus solely on the implications of:

(c) encourage decision-making that facilitates ecologically sustainable development

and

(e) encourage sound environmental practices and procedures to be adopted by the Territory and territory authorities as a basis for ecologically sustainable development.

The Commissioner notes that the combination of factors leading to this complaint are highly specific, and as a result, findings in relation to this complaint may have limited application elsewhere.

In line with the Commissioner's mission to act as an independent voice for the environment and sustainability in the ACT, this report questions whether the ACT planning system adequately considers environmental and sustainability matters which are not explicitly covered by the statutory process. The Commissioner's understanding is that under current arrangements, heritage values included on the heritage register are protected due to their inclusion in the Territory Plan, while broad sustainability values are not⁵. This means that legally there is no basis for 'weighing up' whether a measure to protect heritage will have adverse environmental impacts⁶, because there is no statutory trigger for such sustainability values to be considered. This is symptomatic of a wider weakness – from a sustainable development perspective - in the planning system, in that it results in environmental matters which are not already deemed to be under threat to be excluded from consideration.

In relation to this Complaint, the Commissioner made the following findings.

2.1 Restricted solar access as a result of the new plantings

As part of this investigation, the Commissioner reviewed shadow modelling diagrams which form part of the DA package submitted by CHC Australia. The purpose of these models is to demonstrate compliance with Rule 58 (relating to solar access) in the Multi Unit Housing Development Code. Rule 58 of the Multi Unit Housing Development Code states that:

The floor or internal wall of a daytime living area of not fewer than 70% of apartments on a site is exposed to not less than 3 hours of direct sunlight between the hours of 9am and 3pm on the winter solstice (21 June).

⁵ Executive Branch Manager, Planning and Sustainable Development Directorate, personal commentary 20/10/2022

⁶ Unless those impacts are on statutorily-defined environmental values.

The matter of solar access and overshadowing was considered by a meeting of the Major Project Review Group (MPRG) in August 2018. The briefing provided for the MPRG states that:

A review of the new shadow diagram information suggests the figures are more like:

- 64, 52% comply with the rule
- 21, 17% have 3 hours of solar access between 8am and 4pm
- 38, 31% do not have 3 hours solar access.

Since only 52% of apartments in the development comply with Rule 58, the applicable Criterion was used instead. This Criterion stipulates that ‘*Daytime living areas have reasonable access to sunlight.*’ The meaning of ‘reasonable’ is subjective and the basis on which it has been applied is not clearly explained in the documents provided to this investigation. The Commissioner has subsequently been advised that this decision was based on 69-70% of apartments achieving at least 3 hours of direct sunlight between 8am and 4pm⁷, and this was deemed to constitute ‘reasonable access to sunlight’ by the MPRG. The minutes from the meeting state:

MPRG noted 70% of the apartments would not comply with the solar access requirement in accordance with the code. However, considering the site constraints and provision of communal open space within the site that allows for permeability through the site, MPRG accepted the criterion was met.

An objective rationale for decisions about when and why Criteria are used instead of Rules would be helpful, including the provision of public guidance on this. In this example, the development appears to be a long way from meeting the applicable Rule and it is concerning to the Commissioner that such Rules, which were presumably developed to promote sustainable development practices, can be disregarded in favour of the far less rigorous and more subjective Criteria.

The Commissioner notes that there was no basis for the planning and land authority to lawfully consider tree shade when assessing the development application, or to consider shade from trees when assessing solar access⁸. The Commissioner further understands that it is the planning and land authority’s consistent practice to not consider overshadowing from vegetation when assessing solar access. This practice resulted from several ACT Civil and Administrative Tribunal (ACAT) decisions, the most recent, to which the Commissioner was referred by Planning during this investigation, being *Hamilton v ACT Planning and Land Authority and Ors*, AT 23/2018 (*Hamilton v ACTPLA*), which found that:

It seems that...whether one considers or does not consider the effect of shade trees, there is the potential to produce an absurd outcome. On the respondent’s argument, the decision-maker is asked to ignore the reality of existing trees, which in this case, on any view of the evidence, cast substantial shadows that were not included in the original shadow diagrams, and may not be accurately included in the revised ones. The objectors’ position, however, would require that the developers submit shadow

⁷ A requirement for three hours of sunlight between 8am and 4pm is not mentioned in the Rule or the Criterion.

⁸ DA201731204 also indicated an internal inconsistency in the way trees are considered in the Multi Unit Housing Development Code. Re-planting of the heritage trees is used as a basis for support of an electricity substation at the front of the apartment building:

Larger substation is proposed within view and relatively close proximity to Bradfield St frontage. It is however somewhat obscured by the row of trees...the proposed substation is not opposed.

Screening of electric substations is a criteria in the Multi Unit Housing Development Code. It seems inconsistent that trees are considered part of the development for this part of the code but not for solar access.

diagrams based on variables that cannot be calculated, prophesise what may or may not happen in the future, and adopt a practice that may result in trees being removed contrary to good public policy.

As part of this ruling ACAT also observed the following:

[the relevant development code rule] does not provide any criteria or guidance as to the extent or area of the direct sunlight that is required – it simply states that “the floor or internal wall” must be “exposed to not less than three hours of direct sunlight between 9am-3pm on the winter solstice”. On a plain reading, this appears to mean the requirement is met by any amount of direct sunlight falling on the floor or internal wall during the relevant period.

The determination for the development in question is that *‘the eucalyptus trees do not provide complete shade cover. Some portion of direct sunlight will penetrate the tree canopy. That is sufficient for code compliance.’*

The Commissioner shares ACAT’s view regarding the potential for ‘an absurd outcome’ in weighing the environmental value of urban trees against the sustainability value of solar access for buildings. Likewise, the ACT Planning and Land Authority state in their response to the case, *‘[to] take into account shadow from trees would produce an absurd outcome.*

It would necessarily motivate the removal of those trees in order to achieve rule compliance’. This is obviously not a desirable outcome for the ACT from an environment and sustainability perspective, especially given recent ACT Government commitments to increase tree canopy cover across urban areas.

In the case of this complaint the specifics of the ACAT ruling do not, however, appear directly relevant. While the wording of the Multi Unit Housing Development Code allows for any amount of sunlight reaching the rooms to count towards compliance, it is doubtful that even this small amount of light will penetrate a double row of dense conifers only a few metres away from the apartments. The trees in question for *Hamilton v ACTPLA* are eucalypts, which have a much sparser canopy than conifers and have a crown rather than branches all the way down the trunk. Secondly, the trees in *Hamilton v ACTPLA* are already established at the site and are of varying age and condition, whereas the trees at the Bradfield are to be planted as a condition of the development application. They are not an ‘unknown variable’ to be predicted – they are deliberately planted in a specific pattern as part of the development.



Figure 3: Trees considered by ACAT in *Hamilton v ACTPLA*

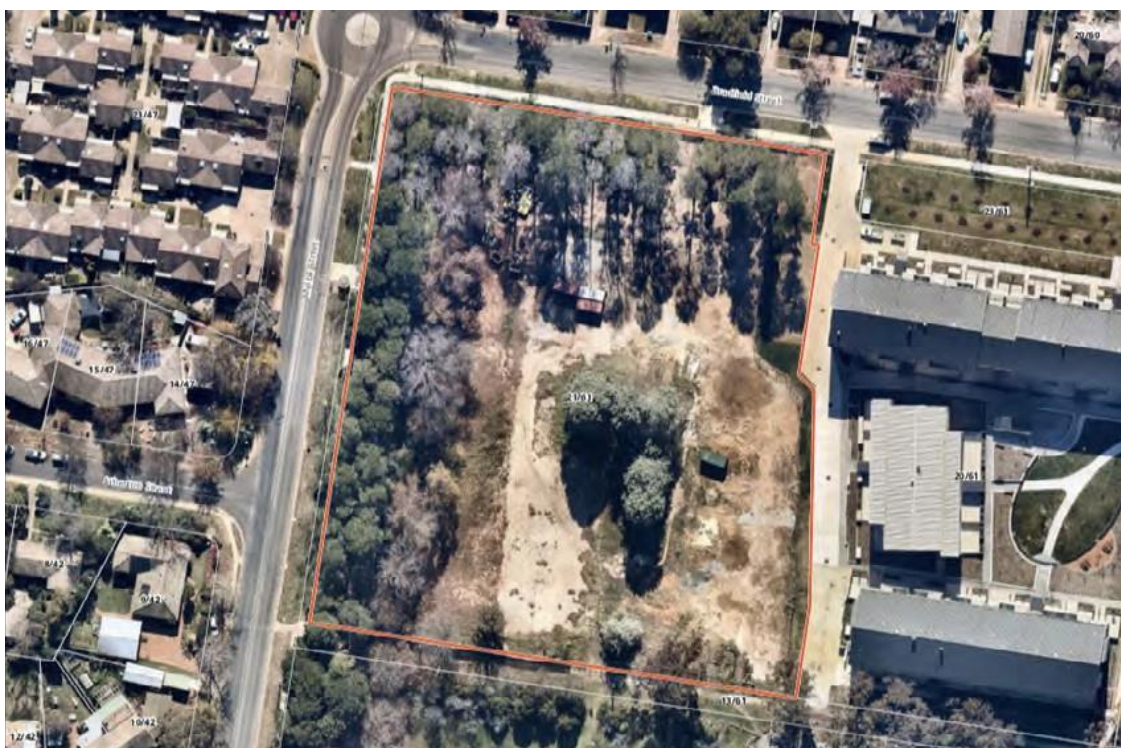


Figure 4: Image from Statement of Heritage Effect showing the extent of shading from the windbreak (left) and new plantings in front of The Bradfield (right).



Figure 5: Mature *P canariensis* on a street verge (in California)⁹

Further, *P canariensis* have a life expectancy in Canberra of 60-80 years at least¹⁰, which is comparable with the anticipated lifespan of a new modern building. It is unclear why a tree should therefore be considered a ‘variable that cannot be calculated’, requiring a ‘prophecy’ to predict ‘what may or may not happen’, when buildings which may have a design life of 50 years or less¹¹ are considered to be permanent and predictable elements of the urban landscape.

The Commissioner agrees with ACAT’s general findings that consideration of tree shade is not appropriate for most solar access assessments. However, in this specific case, the arguments which persuaded ACAT in *Hamilton v ACTPLA* do not apply. The Commissioner is of the opinion that the unique combination of circumstances at this specific site warranted a ‘common sense’ consideration of tree shadows in solar access assessment for The Bradfield. These circumstances are that:

- The trees are a known part of the development, and indeed their inclusion and retention at the site is a *requirement* of the development approval.
- The trees are large, dense conifers planted in a double row. The original purpose of this planting – which afforded it heritage protection – was to provide a windbreak for an open area of land. By design, the planting allows little light to penetrate the barrier.

⁹ <https://www.public.asu.edu/~camartin/plants/Plant%20html%20files/Pinus%20canariensis%20street%20tree%20LA2.JPG>

¹⁰ Urban Treescapes Director Carma Sweet, personal commentary

¹¹ There is no mandatory design life for a building in the ACT, with different structural components being subject to their own individual standards. However, research for this investigation indicates that modern building in Australia typically have a design life of 30-100 years.

Therefore, even the very small amount of light apparently required for code compliance is unlikely to reach the apartments to the south of the windbreak.

- The Bradfield was *already* non-compliant with Rule 58 of the Multi Unit Development Code, with only 52% of apartments meeting code requirements rather than the stipulated 70%. While there are legislative provisions for the MPRG to overrule code requirements where they see fit, in this case their failure to consider tree shading at The Bradfield will result in compliance with Rule 58 falling well below 52%.
- The heritage listed *P radiata* windbreak had been in situ for around 75 years at the time of its removal. Assuming that the new windbreak survives for a comparable period of time (there are examples of *P canariensis* specimens in Australia which are well over 100 years old), this seems a degree of permanency comparable with a modern built structure. It is therefore unclear why the windbreak should be considered an unknown variable while

a building is not.

The Commissioner notes that decisions by ACAT do not need to be self-consistent, so the findings in *Hamilton v ACTPLA* does not preclude a different conclusion being drawn in different circumstances.

For an ecologically sustainable Canberra, a more nuanced approach is needed to weigh up the pros and cons of development impacts where different values are effectively pitted against one another. The Commissioner supports the ACT Government's position of not including tree shade in solar access assessments to avoid unnecessary removal of urban trees. However, in this specific case the unique circumstances regarding the species selection and placement of the trees in keeping with their heritage registration warrant a reconsideration of this approach.

2.2 The unsuitable nature of *Pinus canariensis* for use as street trees

The Complainant raised concerns about the selection of *P canariensis* as a replacement species for *P radiata*, since the ACT Government's own planting guidelines list *P canariensis* as 'not suitable for use as a street tree'.

The Commissioner has received advice from Urban Treescapes officers that while they do not generally agree with planting *P canariensis* in a street setting it is the 'least worst' option in contexts such as this where heritage values must be maintained and has been used elsewhere in Canberra¹² for this purpose. As for the matter above, the heritage matter protected in the Territory Plan overrides more general environmental and public place management issues which are not explicitly statutory matters.

The Commissioner considers that the ACT Heritage Council genuinely considered all alternative species suggested to it by the Complainant, convened special meetings and sought expert opinion regarding other species options. This element of the complaint is however directly related to the third point of this investigation discussed in more detail below.

¹² Such as at Yarramula dog park in the Weston Park Heritage Precinct.

2.3 The apparent primacy of heritage values over environmental and sustainability values

The ACT Government has clear procedures for the provision of entity advice to development assessments, which were followed in relation to DA201731204. The purpose of these procedures is to ensure that any potential impact on existing infrastructure, utilities, registered heritage, or environment matters is identified and, as far as possible, mitigated. However, the system is effectively blind to matters which are not explicitly dealt with in the legislation. There is no opportunity to weigh up how advice from one entity may impact on a different thematic area – in this case, the impact of heritage advice on sustainability outcomes – because within the planning system sustainability is effectively a non-issue when it relates to an area which also has registered heritage values that are recognised in the Territory Plan.

In relation to the substance of this complaint, the assessment and setting of approval conditions for DA201731204 considered advice from the ACT Heritage Council, Transport Canberra and City Services, and the Conservator of Flora and Fauna (the Conservator). A summary of the advice provided by these three entities is provided below.

ACT Heritage Advice

The ACT Heritage Council sought multiple revisions of the SHE Report from CHC Australia until they were satisfied that heritage protection measures were adequate for the development to proceed. The ACT Heritage Council based their decision to agree to the removal and replanting of the windbreak on advice provided by Red Box Design in a report prepared for CHC Australia, which stated that the trees were in poor health and needed to be removed on the grounds of public safety. The ACT Heritage Council were not aware of opinions from Urban Treescapes officers and the Conservator that the analysis of this report was incorrect (see discussion below). Nevertheless, ACT Heritage has subsequently advised the Commissioner in their formal comments on this investigation's findings that even if they had been aware of these opinions they would not have endorsed the removal of only a proportion of the trees (i.e. only those that posed a safety risk) as this 'would have fundamentally altered the character of the heritage windbreak, and diminished its heritage significance'.

ACT Heritage also dismisses the option of using deciduous trees – which would allow for better solar access – on the grounds that they are not compatible with the heritage characteristics of the site.

Transport Canberra and City Services Advice

Formal advice submitted by Transport Canberra and City Services (TCCS) in response to entity referrals for DA201731204 from April 2017 onwards does not include any objection to the removal and replacement of the heritage windbreak trees. This is at odds with internal emails provided to the Commissioner as part of this investigation. These include an email from the then-Manager Urban Treescapes to TCCS executives dated 08/02/2017 which lists extensive reasons why TCCS should not support the proposed approach, including:

- *The 100 radiata pines are in good health and are likely to live for 30 plus years. As such I can't see why there is a proposal to remove the trees. Radiata pine is on the weeds list however we don't actively remove young or mature trees just because they are on the weeds list. The weeds list is a legislative document and as such Radiata pine should not be replanted in breach of the weeds list.*
- *If removal and replacement of the pines goes ahead I'd strongly suggest that an alternative deciduous exotic replacement species is used.*
- *I am surprised the Heritage Council is supporting such a radical proposal and suggest we make contact with the HC.*

Another email to TCCS asset acceptance from CHC Australia (the developer) on 31/01/2017 confirms CHC's intention to remove the heritage trees as part of the development (note this is prior to SHE approval) and states *'As recently as our last meeting prior to Christmas TCCS indicated an unwillingness to receive the replaced trees and maintenance thereof.'*

This email was forwarded to staff in City Services, including the Executive Branch Manager, referencing CHC's desire to *'elevate this further up the chain'* given that acceptance of the trees is not supported by TCCS. The email also states *'It is likely that the issue may still get elevated if we choose to not accept the proposal.'* TCCS' acceptance of the trees appears to have been an important aspect of the approval for DA201731204.

Based on TCCS advice to the entity referral process for DA201731204, it is clear that the proposal to remove the trees was agreed by TCCS at some point prior to the DA submission. It is not clear from the documents provided what the reasons were for this change of position. The Commissioner's requests for clarification on this matter have not resulted in the provision of any further information. Consequently, the Commissioner has concerns about the transparency of this decision-making process given that there is evidence of pressure from CHC Australia regarding the decision.

The position of the TCCS officer stated in the February 2017 email quoted above, including opposition to removal of still-healthy trees and replacement with deciduous species in preference to conifers, would have resulted in better outcomes for ecologically sustainable development in the Commissioner's opinion.

Conservator Advice

On 10 April 2017 the Conservator Liaison notes in feedback to the DA that:

Whilst the Pinus radiata are not regulated trees as defined under the provisions of the [Tree Protection Act 2005] , it is important to provide a comment in respect the Red Box Design group “Summary of Findings“ as a guide to the Heritage Unit which does not have qualified arborists on its staff, and would in all intents and purposes have to rely on the information lodged with the Development Application to make a decision on the future of these historically relevant trees.

- The Pinus radiata trees are hardly in a state of senility.*
- Several individuals with identifiable defects would meet criteria for removal if the trees were regulated under the Tree Protection Act 2005.*
- The long-term viability of the trees is more likely to be in excess of 30 years.*
- Generally the trees would be considered to be in good – excellent health. Whilst being mature many have good trunk height ratios and show no signs of instability.*
- The trees provide a significant aesthetic landscape contribution which is a character of the suburb.*
- The proposed development fails to provide adequate deep root or canopy development space for the reinstatement of a significant tree scape of the same calibre.*
- The removal of the trees is contrary to the aims and objectives of the Tree Protection Act 2005. It is apparent that incorporation of any existing trees within the block was not considered.*

In relation to this complaint, advice about the health of the heritage listed trees was provided to the DA process by the Conservator which differed from the advice provided by the consultant contracted by the developer. However, since the trees are considered a heritage matter under the Territory Plan and not an environment matter, the DA Team could disregard the Conservator’s advice with impunity. Likewise, the Commissioner reviewed emails from within TCCS clearly expressing the opinion that the trees were not in a state of health which would require their removal, but this advice was not shared with ACT Heritage and for unknown reasons was omitted from TCCS’s formal submission to the DA process.

3. Summary of Findings

It is difficult to state definitively that removal and replacement of the heritage listed windbreak, which is the subject of this complaint, has resulted in a net negative outcome for sustainability and the environment. However, this investigation has highlighted areas where the Commissioner considers the ACT Government's actions to be contrary to the principles of ecologically sustainable development.

3.1 Solar access

The specific circumstances surrounding this complaint about the planting of a dense evergreen windbreak immediately to the north of a residential development appears at odds with sustainable development objectives. While the Commissioner agrees with the ACT Government's position that trees should not be removed for reasons of improved solar access for housing, in this matter the existing trees were removed on other grounds. The planting and positioning of the new trees were a condition of the development approval. This is not a case of established trees incidentally impinging on solar access; these trees are a designed and planned element of the development. The species and planting pattern specified as part of the heritage approval intentionally creates a dense barrier effect that will block out sunlight as the trees mature. The Commissioner is of the opinion that such circumstances warrant additional interrogation in the DA process on the matter of solar access, especially since the development was already non-compliant with the relevant development code in this regard.

3.2 Development approval and planning system

Within the DA process, entity advice is provided and considered in a narrow fashion which only considers impacts as they relate to statutorily defined matters. From the perspective of a person not familiar with the planning system, it seems obvious that solar access issues would arise from the re-planting of the heritage windbreak, and that this does not represent sound decision-making in support of sustainable development. However, there was no place in the DA process for this to be considered due to the treatment of heritage and non-statutory sustainability issues as entirely discrete and unrelated, with the former automatically superseding the latter due to its inclusion in the Territory Plan.

The legislation which dictates the development approval process does not adequately allow for consideration of sustainability factors in relation to this complaint. In light of the dual climate and biodiversity crises the world is facing, it is essential that sustainability outcomes are prioritised in the planning system. The exclusion of climate change and sustainability from decisions relating to heritage management in the ACT is a systemic issue which is likely to result in adverse outcomes for the environment and sustainability¹³.

¹³ Refer also to the Commissioners submission to the recent Legislative Assembly Inquiry into the ACT's Heritage Arrangements for further detail on the interplay between heritage and climate in a modern ACT context. https://www.parliament.act.gov.au/_data/assets/pdf_file/0004/2184862/Submission-003-ACT-Commissioner-for-Sustainability-and-the-Environment.pdf

In terms of sustainable development, the ACT Heritage Council's position on permitting removal of healthy trees where this is deemed to protect heritage significance¹⁴ raises a broader question about trees in non-Indigenous heritage precincts and their end-of-life replacement. Within the planning system, consideration needs to be given as to whether it is appropriate to remove healthy non-Indigenous heritage-registered trees on the grounds of maintaining the heritage characteristics of a site, as has occurred in this instance. The removal of such trees is not consistent with the ACT Government's strategy to increase canopy cover and reduce the removal of mature trees from Canberra's urban areas. The retention of healthy trees in the windbreak would have meant that residents of The Bradfield would have known they were buying apartments adjacent to tall shade-casting trees, and this complaint would not have arisen.

3.3 Heritage considerations

The ACT Heritage Council has already shown capacity to adopt an approach which is considerate of the changing context for ACT heritage sites. This is evidenced in this matter by their agreement that continued use of *P radiata* for the windbreak planting is inappropriate as this tree is now classified as an environmental weed. This type of flexibility could and should be applied in other areas where heritage decisions have implications for environmental sustainability. The use of deciduous trees to replace the *P radiata* in the windbreak would have minimised the impacts of the trees on winter solar access for The Bradfield and this complaint would not have arisen.

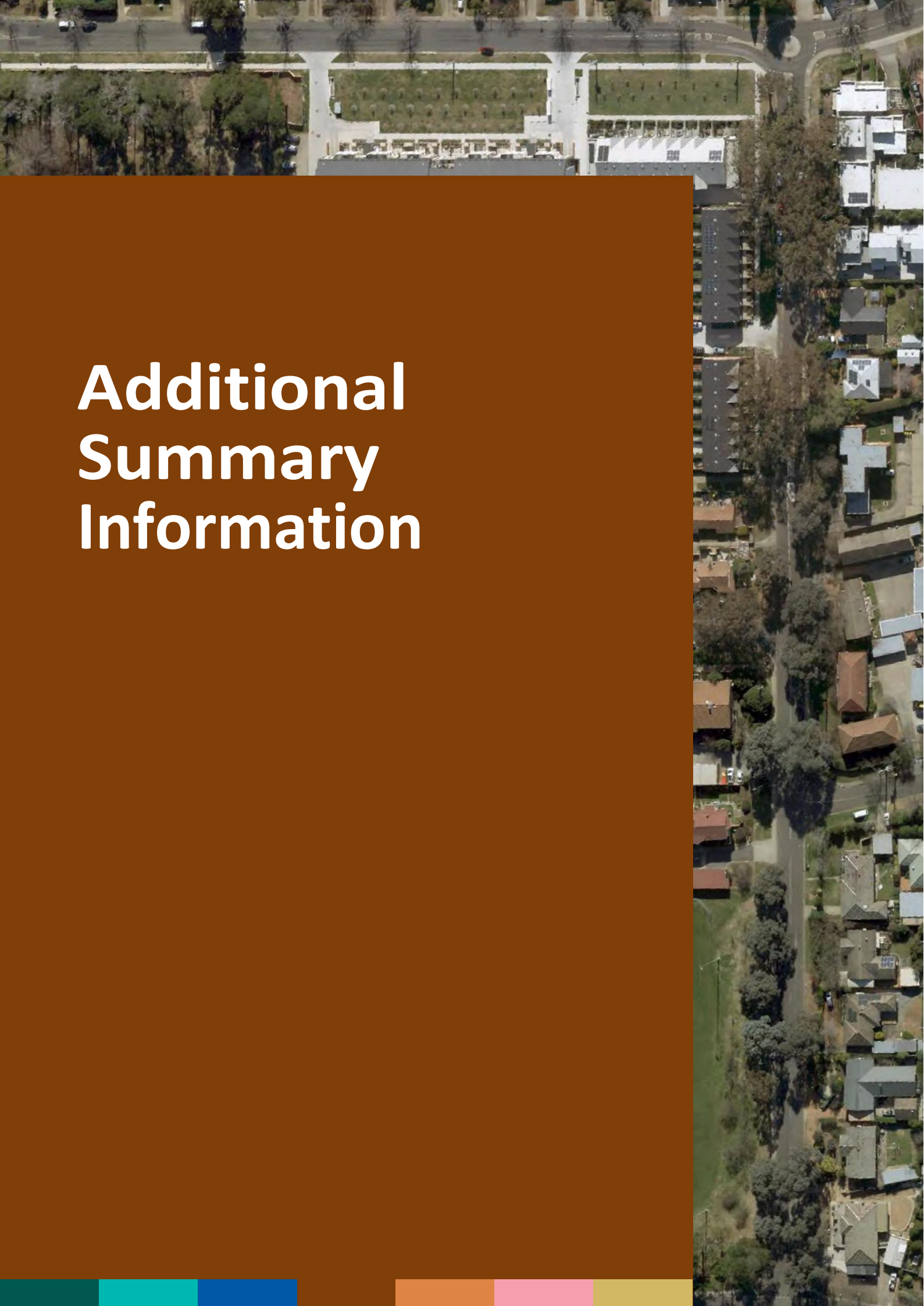
¹⁴ Only a few of the trees in the windbreak were assessed in the Red Box report as being in poor condition, and it is only these that warranted removal on the grounds of public safety. ACT Heritage permitted the removal of all the trees, including healthy ones, to ensure all trees in the windbreak are the same age. This protects heritage values but is a less environmentally sound approach.

4. Commissioner's Recommendations

It is unlikely that the exact circumstances which led to this complaint will arise again, but the issues identified in this investigation also have implications for other 'one-off' developments. Lessons can be learned from this matter and should be considered in the assessment of future DAs where heritage and sustainability elements are at odds.

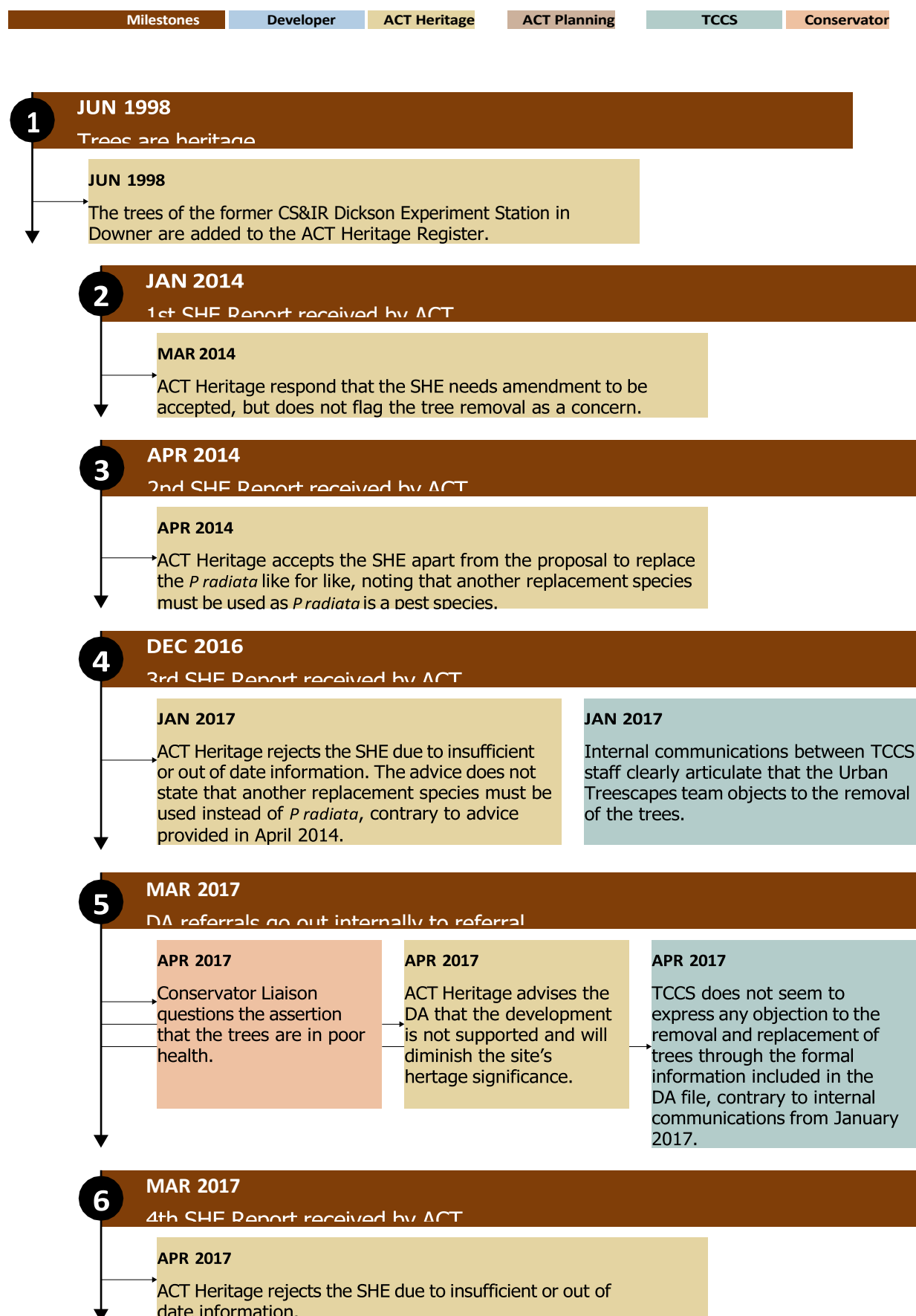
Recommendations:

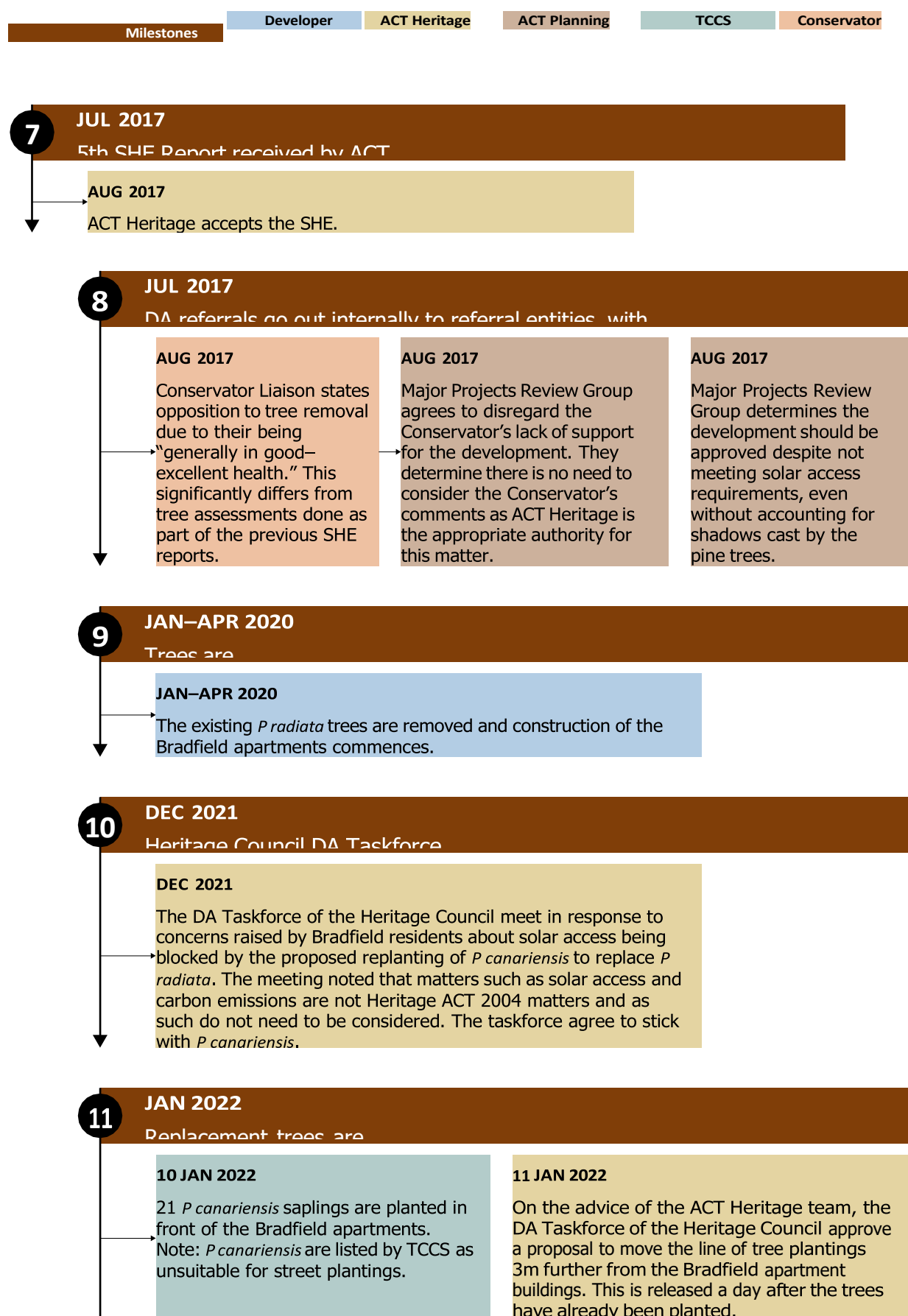
1. Where tree planting is mandated as part of development conditions (e.g., for heritage protection), amendments to the relevant planning codes should be made to enable the consideration of these trees in solar access assessments to ensure the best possible outcome for both tree canopy cover and solar access.
2. As part of the heritage arrangements review and the planning system review and reform, the ACT Government should consider whether it continues to be appropriate for statutory non-Indigenous heritage values to be considered more important than sustainable development where these values are at odds.
3. As part of the ACT Planning System Review climate change mitigation should be introduced into the Territory Plan in such a way that it is referred for entity advice and can be considered on an equal footing with other statutory matters. The referral entity could be the Office for Climate Action.

An aerial photograph of a suburban neighborhood. The image shows a mix of residential buildings, including single-family homes and a larger multi-unit structure. There are numerous trees, green spaces, and a network of roads. A large brown rectangular overlay covers the left side of the image, containing the title text. At the bottom of the page, there is a horizontal bar with several colored segments: teal, light blue, dark blue, orange, pink, and yellow.

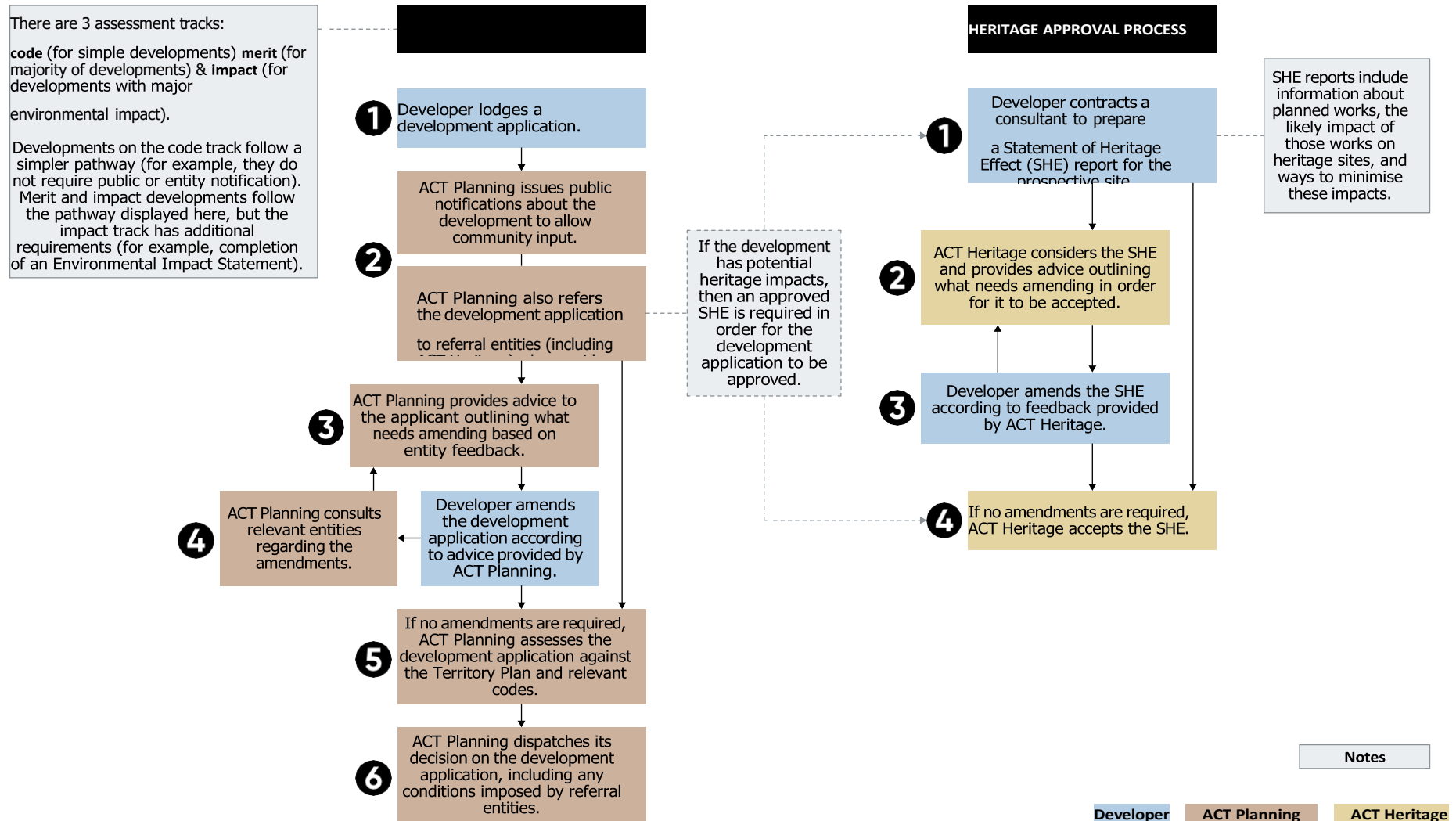
Additional Summary Information

Heritage Tree Timeline





Development Application and Heritage Approval Processes



The Body Corporate POB
The Bradfield Stage 2
20 Bradfield St, Downer, ACT 2602

Dear Ministers Vassarotti, Barr and Rattenbury,

You may be aware that a group of concerned residents in The Bradfield Complex (16-20 Bradfield St, Downer – UP14340) have approached the Heritage Council and Minister Vassarotti on several occasions over the past 12 months about the use of Canary Island Pines as street trees against the northern aspect of their apartment block. While the previous protestations have come from a minority of residents in the apartment complex, the Owners' Corporation (of 123 owners) endorsed that another attempt be made to influence these tree plantings via a motion that was carried at the AGM.

Motion 13: That the Owners Corporation write to the ACT Government to support the replacement of the Canary Island pines, now planted in front of Building 16, with appropriate deciduous trees.

The Owner's Corporation has significant concerns with the Heritage Council's decision that evergreen pine trees be planted in front of Building 16, The Bradfield, on Bradfield Street, Downer. Our concerns are that the medium to long term amenity and safety, energy efficiency and property values will all be negatively affected by having mature pine trees growing on the northern aspect. These negative effects are:

- Reduced direct solar radiation into apartment living areas in winter.
- Increased electricity bills for winter heating due to shading.
- Reduced solar radiation on photovoltaic panels, soon to be installed on the roof of the closest building to the pine trees.
- Reduced liveability of shaded apartments.
- Reduced market appeal of apartments closest to pine trees due to winter shading.
- Reduced property values of the entire complex due to shading and concomitant increased energy costs.
- Cone and branch fall as dangers to pedestrians.

Before expanding on these proximal effects, there are deeper factors that need to be considered.

First, a number of residents purchased their apartments on the north side of Building 16 during the construction phase when there were no pines in place to obstruct the northern aspect. Some of these people were not aware that pine trees were to be (re)planted. You may well say that "buyer beware" but that does not placate people who trusted that north-facing aspect would not be compromised by replanting sun-blocking trees.

Second, we are very well aware of the value of and need for preservation of heritage. In this case there has been a failure of planning to reconcile the desire to maintain heritage with the approval for medium density urban living. The original purpose of the trees – wind break for a field station – is no longer a necessary utilitarian purpose. The replacement of pine trees on heritage grounds creates conflict with the new land use that has been allowed in the area. This failure to unify the goals of heritage with planning affects many aspects of government policy in a negative way: energy policy, greenhouse emissions, liveability, and cost of living pressures. The government's own recommendations in 'Design Standards for Urban Infrastructure' state that CIP trees are "Not

suitable for use a street tree or in home gardens” and “Cone drop can be a nuisance in pedestrian areas”.

Reduced direct solar radiation into apartment living areas in winter.

The Canary Island pines will grow tall enough to begin shading the ground floor apartments in 15-20 years¹. At this point their growth rate accelerates and within another 10-15 years, all four levels of the apartment building will be shaded for the duration of winter. This condemns the residents of all north facing apartments to sun-less, dark living.

Increased electricity bills for winter heating due to shading.

By not having direct solar radiation to heat north-facing glazing, the apartments will (assuredly) use more electricity to heat their living quarters. There are 10 apartments per floor with north-facing aspects – 40 of the 123 apartments in the complex. This is a large proportion of the residents and a large number of households whose energy requirements will increase over time. One set of government policies are striving to increase energy efficiency in our home and reduce greenhouse gas emissions, while another government policy is working directly against them. The obvious conundrum should be addressed rather than ignored.

Reduced solar radiation on photovoltaic panels soon to be installed on the roof of the closest building to the pine trees.

The Owners at the Bradfield Stage 2 recently voted in support of a proposal to install a 37.8kW photovoltaic panel system to generate enough power to cover a significant proportion of the common area power requirements. The PV panels have to be installed on Building 16 because of proximity to the main electrical meter; this is also the building that will be shaded by the pine trees. In approximately 20 years the CIP trees will grow tall enough to shade the PV panels and thereafter reduce power generation for another 10 years of the panels’ lives. Again, the conflict between government policies for reduced energy consumption, reduced greenhouse gas emission and heritage goals is clear.

Reduced liveability of shaded apartments.

Sunny warm environments are much more appealing in a Canberra winter than dark, cold places. Standing on the path to the south of the row of mature Monterey pines that still stand (bordering the Goodwin site) in winter gives an excellent feel for what the Bradfield apartments will become. It is depressing. Why apartments that are designed to be passive solar and energy efficient would be condemned to be shaded all winter is reprehensible.

Reduced market appeal of apartments closest to pine trees due to winter shading.

It is well known, that the Canberra real estate market puts a premium price on north-facing, insulated living environments. In contrast, dark, cold living spaces are shunned. The CIP trees will reduce the north side of Building 16 to low-desirability housing in a couple of decades. Reduced desirability means lower market prices – an effect that is likely to apply across all 123 apartments rather than just the 40 apartments that are directly affected.

Suggestions for a compromise that have been put forward by the concerned residents include deciduous trees, and a single, sparser row of pines have been rejected in favour of recreating a 1950’s landscape that is clearly unacceptable to the land use that has now been sanctioned. Millions

¹ Climent, J. et al. 2004. Fire adaptations in the Canary Island pine (*Pinus canariensis*). *Plant Ecology* 171: 185–196.

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

of dollars of private investment has been made with the expectation that the rhetoric of the ACT government for more energy efficient housing, lower energy use, and lower greenhouse gas emissions will be matched with planning and heritage decisions.

The failing of the ACT government to reconcile planning, heritage, energy, environment and liveability agendas in this one action must addressed.

Members of the Executive Committee welcome the opportunity to meet to discuss resolutions to this problem.

Yours sincerely,

Executive Committee of the Bradfield Stage 2 (UP14340) Owners

Group. 28 October 22

[Redacted signature block]

Cc:

Andrew Barr: Minister for Climate Action

Rebecca Vassarotti: Minister for the Environment/Minister for Heritage/Minister for Sustainable Building and Construction

Shane Rattenbury: Minister for Water, Energy and Emissions Reduction.

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal



Dr Kenneth Heffernan
Chair, ACT Heritage Council
heritage@act.gov.au

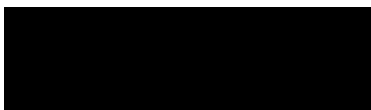
Dear Dr Heffernan,

I am writing to you on behalf of the Downer Community Association (DCA) concerning the heritage listed tree plantings at the Bradfield and the Stage 1 and 3 developments on the old Downer school site.

We have been contacted by the Bradfield Residents Group regarding the suitability of the replanting of Canary Pines in Bradfield Street. We understand their concerns and support their attempts to solve the problem of heritage listed trees verses solar access.

The importance of maintaining the leafy garden aspect of Downer was one of the main concerns of many Downer residents indicated at a community workshop and online survey conducted in 2019. This is a high priority for the DCA and with the changes in climate issues the suitability of new plantings needs to be carefully considered. Therefore we would appreciate it if you would reconsider their alternate suggestions to the problems they have identified.

Yours sincerely,



DCA Convenor

Date 6.6.22

cc **Rebecca Vassarotti MLA, Minister for the Environment; Heritage, Homelessness and Housing Services; and Sustainable Building and Construction**
 Chris Steel MLA, Minister for transport and City Services
 Owners' Corporation, 45 Frencham St, Downer
 The Chair, Community Housing Canberra
 The Chair, Goodwin Aged Care

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

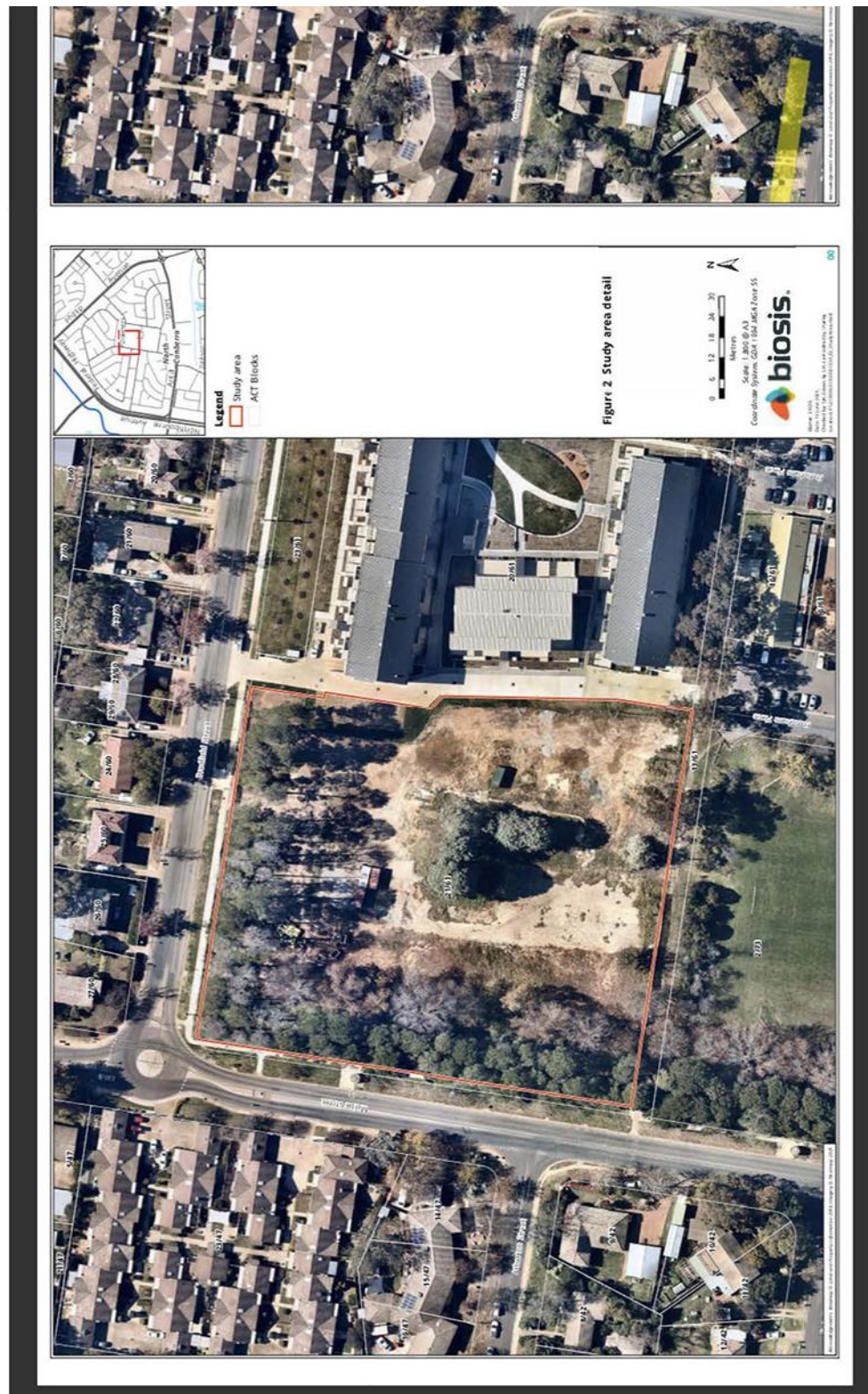


Existing Monterey pines in Bradfield Street. Interim Heritage Council members will be able to visualise the future growth of the newly planted Canary Island pines, the proximity to Building 16, Stage 2 The Bradfield, and the shading on the north-facing apartments, that will eventuate. There will also be a shading impact on the 38kw PV panels on the western end roof of Building 16.



Mid-July at 1530. Shading on Building 16, from pine trees on the Goodwin Village site. Roof shading is also obvious.

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal



Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

APPLICATION CO-SIGNATORIES AND CONTACT DETAILS

NAME	ADDRESS	PHONE	EMAIL
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Trees of the Former CS&IR Experiment Station – Partial Cancellation Proposal

APPLICATION CO-SIGNATORIES AND CONTACT DETAILS

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

author, date and name), site recording forms for Aboriginal places/objects (contact ACT Heritage for blank forms).

Author/s or Source	Title/Description	Date
Office of the Commissioner for Sustainability and the Environment	Failure of the ACT Heritage Council to consider climate change and environmental sustainability in its decision to re-plant trees at Downer.	June 2022

List all attachments enclosed:

1. Brief to ACT Legislative Assembly Standing Committee.
2. Report from Office of Commissioner for Sustainability and Environment.
3. Executive Committee of Stage 2 The Bradfield body corporate to the Minister for Heritage, dated 28 October 2022.
4. Letter of support from Downer Community Association dated 6 June 2022
5. Image showing future proximity of pines to Stage 2 The Bradfield, and to proposed Goodwin Village. Some imagination required!
6. Image of shading pattern. Bios Goodwin Village DA.
7. Names and contact details of Co-signatories to this application- 28 owners from Stage 2 The Bradfield, two owners from Stage 1 The Bradfield.

06 AUTHORISATION

I wish to have this registration cancelled, in whole or in part as indicated, in accordance with Part 7 of the *Heritage Act 2004*.

The information provided here is accurate to the best of my knowledge and may be made publicly available for the purpose of cancelling the registration of this place or object, unless otherwise indicated.

I understand that giving false or misleading information is a serious offence under the *Criminal Code 2002*.

07 PERSONAL INFORMATION DISCLOSURE STATEMENT

The personal information on this form is provided to the ACT Heritage Council and ACT Environment and Planning Directorate for the purpose of processing your application for cancellation of registration of a heritage place or object. If you do not provide your contact details, the Heritage Council will not be able to process your application. EPD's Information Privacy Policy contains information about how you may access or seek to correct your personal information held by EPD, and how you may complain about an alleged breach of the Territory Privacy Principles. The EPD Information Privacy Policy can be found at www.act.gov.au/epd/information_privacy.

By ticking this box I give my consent for my name / organisation to be disclosed as the applicant for this cancellation proposal.

Signed: _____

Date: 21/2/2024 21/2/2024