

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**REPORT 11 OF THE STANDING COMMITTEE ON PLANNING, TRANSPORT AND
CITY SERVICES**

INQUIRY INTO THE URBAN FOREST BILL 2022 - GOVERNMENT RESPONSE

**Presented by
Mr Chris Steel MLA
Minister for Transport and City Services
March 2023**

Introduction

The ACT Government welcomes the Standing Committee on Planning, Transport and City Services' (the Committee) Report on the Inquiry into Urban Forest Bill 2022 (the Bill).

The ACT Government is committed to supporting a sustainable urban forest and achieving 30% tree canopy cover or equivalent by 2045 in line with the *Urban Forest Strategy 2021-2045* and the *ACT Climate Change Strategy 2019-2025*. The Bill was prepared to provide a consistent legislative framework for managing the protection of trees on public unleased and private leased land in the urban ACT. It is proposed to repeal and replace the *Tree Protection Act 2005*.

The Bill retains key elements from the Tree Protection Act, notably the protection of regulated trees on private leased land, the ACT Tree Register, and penalties for unapproved activities that may damage protected trees. These measures are replicated and extended in the Urban Forest Bill.

In addition, the Bill introduces:

- consistency in tree protection across the urban ACT, through extending protections to trees on public land;
- a lower minimum size threshold for regulated trees on private land;
- enhanced protection for ecologically significant trees;
- a Canopy Contribution Framework to ensure that where trees are approved for removal, they are replaced; and
- tree bonds and an updated compliance framework.

The Bill was introduced in the ACT Legislative Assembly (the Assembly) on 3 August 2022 and was referred to the Standing Committee on Planning, Transport and City Services (the Committee) on the same day. The Committee resolved to inquire into the Bill on 12 August 2022.

Recommendations and Government Response

Recommendation 1: *The Committee recommends that the Bill be amended to specify that the size of a tree for which an application for approval of tree damaging activity is made, is the size of that tree at the time the application is made.*

Government response: Not agreed

As part of the assessment of a tree damaging activity application the size of a tree on leased land is measured to determine whether the tree canopy height, canopy width or trunk diameter meet the minimum size thresholds for protection as a regulated tree. The size of the tree does not substantially affect an application in any other way.

In applications under the Urban Forest Bill, the size of the tree is the size of the tree at the time the tree is assessed by ACT Government officers. The Bill requires the decision-maker to decide on an application within 35 working days (section 28), including completing an assessment of the tree to guide this decision (section 23). This is delegated to ACT Government officers with qualifications and/or experience in arboriculture who conduct an on-site technical tree assessment to determine whether the tree is a regulated tree and whether the tree satisfies the approval criteria. Due to the slow nature of tree growth compared to this application assessment timeframe, it would be rare that the size of a tree would substantially change between the date of application and the date of assessment.

The recommended change would only be of relevance in very rare cases and can largely already be resolved through two pathways. Such cases can be resolved by the would-be applicant at any time by engaging an arborist to measure the tree. Where a tree does not meet the minimum size threshold, an application is not required for tree works.

Alternatively, such cases can be resolved by submitting an application: as part of assessing the application ACT Government officers will measure the tree and advise on whether the tree is a protected tree that meets the criteria for activity approval within 35 working days.

The process proposed under the Bill provides measurement accuracy and consistency of process equally across all applications. This recognises that definitive measurement of tree size requires arboricultural knowledge and tools, which are typically not accessible to applicants without the financial burden of engaging an arborist. This also recognises that tree size is unlikely to substantially change within the 35 working day application assessment timeframe.

Recommendation 2: *The Committee recommends that the review of legislation to be undertaken two years after commencement to address whether the tree dimension parameters are achieving the policy objectives.*

Government response: Agreed - existing Government policy

The ACT Government notes that the section 145 of the Bill includes a statutory review two years after commencement of the Bill. This provision has been included to allow for consideration of the operation and effectiveness of the Act. A report will be tabled in the Legislative Assembly following this review. The Government agrees that this review should consider whether the minimum dimensions for the canopy height, canopy width and trunk width of regulated trees are achieving the policy objectives.

Recommendation 3: *The Committee recommends that the ACT Government establish clear linkages to existing laws and policies, such as the Action Plan to Prevent Loss of Mature Native Trees, and a clear framework about how to protect remnant trees and mature trees, particularly in new development areas.*

Government response: Noted

The ACT Government recognises that coordinated and consistent communications are best practice when managing complex issues that are subject to multiple laws and policies and are governed by multiple government agencies. During the development of the Bill TCCS consulted with the EPSDD business units responsible for developing the Action Plan to Prevent the Loss of Mature Native Trees and for overseeing new development areas. TCCS and EPSDD continue to work closely together when developing and reporting on plans, frameworks and actions in this area where there are linkages between the management of biodiversity across urban and rural areas of the ACT.

The ACT Government note the Committee's recommendation that further clarity on the interrelation between the Urban Forest Bill and existing laws and policies such as these would be beneficial. There is ecological value and community interest in establishing clear guidance on the protection of remnant and mature trees, particularly in new development areas. TCCS and EPSDD will continue to work together to communicate the linkages between such laws and policies.

Recommendation 4: *The Committee recommends that the ACT Government consider the appropriateness of tree species as part of future urban planting with regard to the risk of damage from severe weather events.*

Government response: Agreed - existing Government policy

The ACT Government recognises the importance of planting the right tree in the right place at the right time. The ACT Government planting program regularly reviews species choice and the suitability of locations on public land. Considerations for future urban plantings include determination of species suitability for Canberra's current and future climate, the eventual mature size of the tree and for proximity to other urban infrastructure. This takes into account significant factors including urban heat and the increasing occurrence and severity of severe weather events.

The ACT Government provides urban landscape guidance to industry including developers who plant trees in Canberra. The Municipal Infrastructure Standards include a list of appropriate tree species for Canberra, with details on species' mature size, target soil volume, site restrictions and management and siting notes including site suitability, tolerance of pests, soil type, weather, climate conditions and proximity to infrastructure. Transport Canberra and City Services Directorate routinely reviews which species are appropriate to be retained or added on to the Municipal Infrastructure Standards list.

Recommendation 5: *The Committee recommends that the ACT Government consider the importance of tree distribution for minimising urban heat island effect when assessing tree-damaging activity applications.*

Government response: Not agreed

The ACT Government recognises the importance of tree distribution for minimising urban heat. The Bill seeks to create an overarching framework to ensure the sustainability of the ACT urban forest. This includes establishing a process to allow tree removals where appropriate, on the condition that these trees and the benefits they provided are replaced.

The tree damaging activity application process provides Canberrans with a pathway to seek approval for works to trees. A defined set of criteria set out in the draft *Urban Forest (Approval Criteria) Determination 2022* ensure that works would only be approved where appropriate, for example when a tree is in decline and its life expectancy is short, when a tree represents an unacceptable risk to public or private safety, or where a tree is shown to be causing or threatening to cause substantial damage to a substantial building, structure or service. It is critical that these decisions not be influenced by considerations of tree distribution, as they relate to individual circumstances where a tree may impact the safety and amenity of urban areas, or where a tree at the end of its life may be unable to provide the benefits that it once did.

For each tree damaging activity application, an appropriately qualified representative from the TCCS Urban Forest team physically assesses the tree for each tree damaging activity application to determine if it meets the above criteria.

Amending the criteria to consider ‘*tree distribution for minimising urban heat island effect*’ could inadvertently broaden, and subsequently weaken, the criteria for approving a tree damaging activity. The inclusion of this criteria could be used as a justification for removing a tree located in an area with high canopy coverage and low urban heat island effect.

The impact of tree loss on leased land on tree distribution will be managed through the Canopy Contribution Framework which will incentivise replacing trees in situ and will ensure that the benefits of removed trees are replaced elsewhere where there is no suitable space to replant on site. Financial contributions to the Canopy Contribution Framework will be used to expand and renew the urban forest, including through planting programs on public land that will strategically prioritise areas that are prone to the urban heat island effect.

The ACT Government’s Urban Forest Strategy informs tree planting and distribution, with the objective of minimising urban heat island effects. The new Territory Plan variation 369 (Living Infrastructure in Residential Zones) also minimises the urban heat island effect by introducing rules relating to tree coverage for residential developments.

The urban forest management by the ACT Government is the operational pathway through which tree canopy targets are being pursued. Guided by the *Urban Forest Strategy 2021-2045*, the ACT Government is actively pursuing spatial distribution of canopy cover through its tree maintenance and biannual planting programs on public land. These planting programs target areas that have been identified as vulnerable to urban heat, suburbs with low canopy cover, and renewal plantings where the ageing forest is likely to result in a short-term loss of canopy as trees at the end of their useful life require removal and replacement.

The Report to the Legislative Assembly on Urban Trees Canopy Coverage is delivered annually as a progress update on all Urban Forest Strategy initiatives and their contribution towards the targets. In addition to these details annually, every 5 years this is to report on the current tree canopy cover percentage, by suburb, for Canberra’s urban footprint.

In 2020-2021 the ACT Government planted over 10,000 trees on public land in the urban ACT. The November 2022 Report highlighted suburbs identified for priority action, provided maps and data canopy cover as of 2020 for each suburb in the ACT, and reported the number of trees planted across each district in the urban ACT in 2020-2021.

Recommendation 6: *The Committee recommends that the Bill be amended so the Tree Advisory Panel includes at least one representative of traditional custodians, one environmental scientist and one Registered Landscape Architect.*

Government response: Not agreed

Clause 57 of the Urban Forest bill requires that Aboriginal cultural trees must be provisionally registered and therefore protected. Clauses 59 impose requirements for the Conservator to consult with Aboriginal representative organisations before decisions are made to register or not to register Aboriginal cultural trees. All tree damaging applications relating to Aboriginal cultural trees must be provided to each representative Aboriginal organisation and the Heritage Council (S25), and their advice must be considered in decision making.

The ACT Government notes that the Tree Advisory Panel (the Panel) is established under the Bill to provide advice to the Conservator upon request on applications for tree damaging activities, tree management plans, tree registration and cancellation of registration, and applications for the internal review of a decision. The Panel serves as an independent advisor with expert knowledge of trees in the urban environment.

Section 99 of the Bill sets out that each member of the Panel must have extensive knowledge of or experience in one or more of the fields of arboriculture, horticulture and forestry, with a minimum of one member with experience in arboriculture and forestry. Due to the highly technical nature of the advice provided, it would be inappropriate to admit panel members who did not have extensive knowledge or experience in one or more of these fields.

The ACT Government recognises the role of cultural knowledge and experts in other environmental fields in advising on relevant circumstances, such as traditional custodians advising on Aboriginal cultural trees or environmental scientists providing advanced insight into the ecological value of trees. Under the current *Tree Protection Act 2005* the Panel may seek advice of relevant experts when their particular knowledge would be of value due to the unique circumstances of the matter that the Panel is advising on. This would continue under the Bill.

Recommendation 7: *The Committee recommends that the ACT Government consider suitable replacements for pest trees that are removed.*

Government response: Agreed

The ACT Government notes that it is important to balance canopy cover with overall ecosystem health. As highlighted in several submissions to the Committee Inquiry, the species of trees within the ACT urban forest has impacts on biodiversity within and beyond the urban ACT. This includes trees which are pest plants under the *Pest Plants and Animals Act 2005*. These can spread into nature reserves, be carried on waterways and end up disrupting native plant communities or ecosystems.

On public land, trees are removed when they are at the end of their life or where intervention is required for public safety. Where the trees removed are pest plants the ACT Government would replant an alternative species that is suitable to the site, and, where possible, matches the character of the area. This renews the urban forest to be more ecologically sensitive whilst recreating the garden city plantings and consistent streetscapes that are typical of Canberra.

Trees on leased land which are pest plants under the *Pest Plants and Animals Act 2005* are not regulated under the Bill. Applications are not required for their pruning or removal, and the Canopy Contribution Framework will not apply to these trees. The ACT Government does not actively advocate the removal of such trees in urban areas. Rather, this position in the Bill, which continues the policy under the *Tree Protection Act 2005*, passively facilitates the removal of trees which are pest plants when their owners wish to remove them. Whilst the removal of pest trees may result in a minor loss of canopy cover, their removal has wider ecosystem benefits.

Recommendation 8: *The Committee recommends that the ACT Government consider whether the policy which covers canopy targets addresses how a good spatial distribution of canopy can be achieved, and where suburbs already have a 30 percent canopy, how that canopy can be maintained.*

Government response: Agreed

This recommendation relates to the ACT Government target to achieve 30% tree canopy cover or equivalent by 2045 across the urban ACT, as set out in the Climate Change Strategy 2019-2025 and *Canberra's Living Infrastructure Plan 2019-2025 and the Urban Forest Strategy 2021-2045*. The Urban Forest Bill is the pathway through which certain legislative actions from the *Urban Forest Strategy 2021-2045* are being pursued. The Bill sets out the framework for tree protection on leased and public land in the ACT and introduces a Canopy Contribution Framework to ensure that where protected trees are removed, they are replaced.

The urban forest management by ACT Government is the operational pathway through which this target is being pursued. Guided by the *Urban Forest Strategy 2021-2045*, the ACT Government is actively pursuing spatial distribution of canopy cover through its tree maintenance and biannual planting programs on public land. These planting programs target areas that have been identified as vulnerable to urban heat, suburbs with low canopy cover, and renewal plantings where the ageing forest is likely to result in a short-term loss of canopy as trees at the end of their useful life require removal and replacement.

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Recommendation 9: *The Committee recommends that the Bill be amended to specify that applications, notifications and decisions on tree damaging activity be published on the Transport Canberra and City Services website.*

Government response: Not agreed

The ACT Government notes that the scale of tree damaging activities' direct impacts to the broader community is not comparable to other activities, specifically the outcomes of development applications. Tree damaging activities most commonly pertain to single trees that meet the approval criteria for removal for reasons such as safety, amenity and tree decline. Removals of trees for other purposes, such as the removal of multiple trees to develop land, require a development application and are subject to separate notification requirements under the *Planning and Development Act 2007*.

The publication of information on tree damaging activity applications would require careful management to uphold the privacy of ACT residents as these applications relate to trees on leased land. This would also require significant administration and investment in IT solutions to create this functionality. At this time there is not sufficient community benefit to justify this loss of privacy or this level of Government investment.

Recommendation 10: *The Committee recommends that the ACT Government provide additional FTE resources for applications, processing, compliance and enforcement so that the Tree Protection Unit in TCCS, the statutory planning team in EPSDD, the conservator and any other areas involved can process applications quickly, conduct inspections and enforce breaches of the legislation.*

Government response: Agreed in principle

The ACT Government recognises that sufficient resources will be required in order to successfully implement the Bill. The ACT Government intends to provide additional resourcing to ensure the Bill can be implemented to achieve its stated objectives, however it notes that this resourcing requirement will be subject to consideration through the budget process.

Recommendation 11: *The Committee recommends that the Bill be amended to specify in clause 32 that decisions on applications for approval in urgent circumstances should be notified to the applicant as soon as practicable after receipt of the application.*

Government response: Agreed

The ACT Government will move an amendment to section 32 to state that decisions for approval for an activity in urgent circumstances should be notified to the applicant as soon as practicable after receipt of the application. This notification may be given orally or in writing but any oral approval must be followed up by a written record as soon as practicable, as is outlined in in sub-section 6. This mirrors the current process for administering urgent circumstances applications under the *Tree Protection Act 2005*.

Recommendation 12: *The Committee recommends that the ACT Government review the scale of contributions to the Canopy Contribution Fund two years after commencement to determine whether fees are set at a level that achieves the policy objectives.*

Government response: Agreed

As noted above, the Bill includes a statutory review two years after commencement of the Bill. The ACT Government agrees that this should include reviewing the scale of contributions to the Canopy Contribution Fund to determine whether the contributions outlined in the *Urban Forest (Canopy Contribution Agreements Financial Settlement) Determination* are set at a level that achieves the policy objectives.

The calculation factors for financial settlements are set in a disallowable instrument. This allows for the amounts to be updated in order to remain current and effective. The instrument can be reviewed at any time separate to the statutory review.

Recommendation 13: *The Committee notes the concern that the building and construction industry has with this Bill and recommends that the ACT Government provide a briefing to the industry so that the sector can better understand the requirements of the Bill.*

Government response: Agreed

The ACT Government notes that during the public engagement on the Bill that ran from 21 April to 2 June 2022, TCCS officials hosted four workshops with representatives from relevant industries, conservation bodies and community groups. Industry associations and individual businesses from the building and construction industry were invited to a targeted workshop as part of this, and an additional workshop was held on request. The industry stakeholders who engaged in these workshops received a targeted presentation accompanied by explanatory written information on the Bill and the opportunity to ask questions and share their perspective on the proposed changes.

If the Assembly passes this Bill, ACT Government will engage the relevant stakeholders and groups from the building and construction industry prior to the commencement of the legislation. Communication will be designed to support this sector to better understand the requirements of the Bill. In recognition of the need to assist the building and construction industry to prepare for the changes the Government also intends to move an amendment to delay the commencement of the Act by six months. This delay is intended to allow sufficient time for further engagement with stakeholders to ensure they understand the requirements of the Bill.

This will also support the ACT Government to prepare for a seamless implementation of the Bill, with delivery of critical software systems, finalisation of new procedures and engagement materials, and to prepare the workforce to successfully administer the Bill.

Recommendation 14: *The Committee recommends the ACT Government continue to work closely with key stakeholders in the building industry and in the community during the implementation of the Act.*

Government response: Agreed

The ACT Governments agrees that it will be essential to engage with key stakeholders in the building industry and in the community to ensure the implementation of the Act is successful. Through the public consultation process conducted in 2022, the ACT Government developed a list of key stakeholders in the arboriculture and landscaping

industry, the construction and development industry and conservation-focused and community representative groups. These stakeholders were provided information about the public engagement on the Urban Forest Bill and were directly invited to participate in workshops during this period. Approximately fifty representatives attended a total of four workshops where they were able to learn more about the proposals in the Bill, share their perspectives and recommendations, and ask questions to further their understanding on the proposed changes.

If the Assembly passes this Bill, ACT Government will engage these groups in the lead up to the commencement of the legislation, providing clear and relevant information to heighten their understanding of the Bill. The Government will continue to work closely with these stakeholders as required to support them during the transition to implementation.

Recommendation 15: *The Committee recommends that the Bill be amended to make clear the criteria by which the decision-maker will determine the conditions of a canopy contribution agreement under subclause 36(2).*

Government response: Noted

The Bill sets out the Canopy Contribution Framework, including the circumstances under which it applies, and the general principles of on-site contributions and financial settlements. The details of canopy contribution components will sit within subordinate legislation. Including this detail in subordinate legislation provides greater flexibility for updating these calculations over time to ensure they remain appropriate. This aligns with schedules of fees under other Acts, and with the criteria for tree damaging applications and tree registration nominations.

The factors by which the decision-maker will determine the financial settlements will be set out in the *Urban Forest Regulation* and the *Urban Forest (Canopy Contribution Agreements Financial Settlement) Determination*. Drafts of these proposed instruments are currently available on the YourSay website. The factors by which the decision-maker will determine the conditions for on-site canopy contributions will be set out in the *Urban Forest (Canopy Contribution Agreements On-Site Contributions) Determination*. These subordinate legislative instruments will be made once the Bill commences.

The factors by which the decision-maker will determine any other conditions will be laid out in ACT Government policy and supported by clear guidance to applicants. Information will be available on the City Services website to support potential applicants to understand canopy contribution requirements and processes.

Recommendation 16: *The Committee recommends that the ACT Government increase awareness and educate the ACT community on canopy contribution agreements and their administration.*

Government response: Agreed

The ACT Government is preparing information to inform the community of the changing requirements before they come into effect. This will include information on the changes to the definition of a protected tree, and the introduction of tree bonds and canopy contributions.

If the Assembly pass the Bill, the ACT Government will publish clear information on canopy contributions on the City Services website and will provide educative materials in a range of

formats prior to implementation. As noted above, the Government intends to move an amendment to delay the commencement of the Act by six months. A commencement date of 1 January 2024 will allow sufficient time for ACT Government to increase awareness and educate the ACT community, including promoting understanding of the canopy contribution framework.

This will also support the ACT Government to prepare for a seamless implementation of the Bill, with delivery of critical software systems, finalisation of new procedures and engagement materials, and to prepare the workforce to successfully administer the Bill.

Recommendation 17: *The Committee recommends that, after considering and responding to the recommendations in this report, the Assembly pass the Urban Forest Bill 2022.*

Government response: Agreed

The ACT Government welcomes the Committee's recommendation that the Legislative Assembly pass the Urban Forest Bill 2022.