



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

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STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES  
Ms Jo Clay MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),  
Mr Mark Parton MLA

## Submission Cover Sheet

### Inquiry into Urban Forest Bill 2022

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HOUSING INDUSTRY ASSOCIATION



Submission to the  
Legislative Assembly for the Australian Capital Territory  
Standing Committee on Planning, Transport and City Services

## Inquiry into the Urban Forest Bill 2022

2 September 2022

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## ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 30,000 member businesses throughout Australia.

The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a sustainable, quality driven, and affordable residential building development industry. HIA's mission is to:

*"Promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors. The aggregate residential industry contribution to the Australian economy is over \$150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 other centres around the nation providing a wide range of advocacy, business support including services and products to members, technical and compliance advice, training services, contracts and stationery, industry awards for excellence, and member only discounts on goods and services.

## 1. INTRODUCTION

The Housing Industry Association (HIA) is pleased to provide comments to the Legislative Assembly Standing Committee on Planning, Transport and City Services inquiry into the *Urban Forest Bill* 2022 (ACT) ('Urban Forest Bill'). We understand the ACT Government's proposal is for the draft bill to repeal and replace the *Tree Protection Act* 2005 (ACT) ('Tree Protection Act'). HIA made a submission to the government on the review of the Tree Protection Act in December 2019.

HIA recognises the government's target to achieve a 30 percent tree canopy cover for the ACT by 2045. Whilst acknowledging the government's commitment to preserving and protecting trees for future generations and reducing the heat island effect of the city, the impact on development viability and housing affordability must also be considered.

As HIA articulated previously – most recently with respect to Variation 369 to the Territory Plan – the burden for meeting the target of 30 per cent tree canopy cover should not be disproportionality borne by residential housing at the expense of sensible redevelopment. With the ACT Government's focus on infill development – the 2022-23 ACT Budget reaffirmed the target of 70% infill for new residential dwellings - it must be accepted that this policy will have an impact on existing trees in brownfield sites.

- Removal of trees for development in the ACT can be difficult and time consuming for the housing industry. HIA will be supportive of any measures that speed up the approval process, but not make it just as difficult, and with a fee attached. It is essential that future legislation use the requirement to replace trees (or make a monetary contribution in lieu) as a means of speeding up development, rather than slowing it down. In our view the Urban Forest Bill does not achieve this.
- The Urban Forest Bill must not contribute to making sites unviable for development. The housing industry is already in crisis with a shortage of land for new homes, together with materials and labour shortages. The industry is already struggling to build new homes and the Urban Forest Bill must not make things harder.
- Housing affordability must be a consideration in the development of new policy. Policy contained within the Urban Forest Bill should not add to the cost of building a new home. There is already declining housing affordability across the nation, and any additional cost to the land developer or builder, is passed down chain to the new home buyer.

## 2. HOUSING AFFORDABILITY

There are a range of factors critically impacting the performance of the housing industry nationally in this post-pandemic period, as follows:

- Land prices have risen by 12.6 percent, over the year to September 2021, even more so in the ACT.
- Building materials prices have increased by 15.4 percent, over the year to March 2022.
- The price of skilled trades has increased by 5.1 percent, over the year to March 2022.

The significant increase in the price of land indicates that supply is not keeping up with demand. In addition, there are also serious shortfalls nationally in the supply of rental property. Rents in Canberra are currently at record highs for both houses and units. A vacancy rate of 0.5 percent in March 2022 suggests that growth in rental prices will continue to increase until supply increases. Medium weekly asking prices for rents for the year to March 2022, were up by 16.7 percent for a house and 8.0 percent for a unit in Canberra.



Housing affordability continues to be a serious problem in the ACT. The most recent HIA Economics Affordability Report (December 2021 Quarter) reports Sydney and Melbourne as the least affordable capital cities, followed closely by Canberra.

Since the end of 2019, affordability in Canberra has deteriorated by 14.4 percent on the back of a 35.8 percent increase in dwelling prices. This steep increase in dwelling prices and deterioration in affordability represents a continuation of the tightening housing market. Canberra is now less affordable than at any point in the last decade. The graph below shows the HIA's housing affordability index for the ACT and the marked decrease in affordability since late 2020.

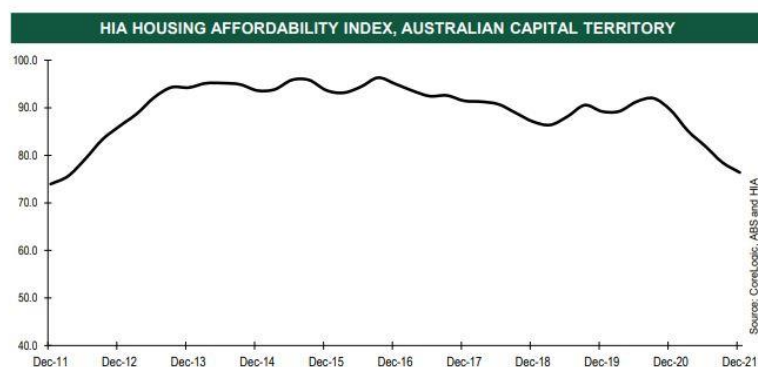


Figure 1 - HIA Affordability Report, December 2021 Quarter

Any delays in the planning and building process, including for tree assessments, can have a significant impact on project delivery timeframes, adding to costs and impacting affordability.

### 3. FINANCIAL IMPACTS OF THE URBAN FOREST BILL

HIA has sourced feedback from a number of established builders within the Canberra area and provides these submissions in response.

Overall, builder feedback has been that the current approval processes under the Tree Protection Act frequently require a landowner (and their prospective builder) to wait for a number of months before being able to find out whether a development application which involves a regulated tree will be refused outright, or approved subject to conditions - which inevitably involve further delays.

These kinds of delays are highly disruptive to construction contracts. In the current residential construction market, delays of even a few months can result in builders being forced to 'shoulder the burden' of rapidly increasing material costs, and ultimately lose up to the entirety of their anticipated profit margin on any fixed price contracts. This can financially cripple individual builders.

HIA does not take issue with the concept of landowners being able to enter into 'canopy contribution agreements' as a method of balancing the interests of those landowners with the ACT Government's mandate to support tree protection and safety.

Nevertheless, HIA cannot support the implementation of a scheme of restrictions which is not carefully structured to provide a corresponding improvement in the capacity of landowners to remove trees that hinder development.

We encourage the Standing Committee to consider that, in exchange for the added financial burden of entering canopy contribution agreements, landowners should be presented with realistic prospects of receiving a streamlined approval process, with far fewer delays and more certain outcomes.

As noted earlier, HIA – and the general community – is sensitive to additional costs being placed on the construction of a new dwelling. With this in mind, there are obvious concerns towards proposed schemes that add additional costs to Canberra families when building a home.

Any costs associated with an offset scheme can potentially replace some of the imposts associated with an inflexible model for tree removal. Nonetheless, schemes should still be designed with housing affordability as one of the criteria.

Ideally, formal approvals (whether through planning or a Conservator) should be reserved for more complex situations, with a codified scheme being the means by which simpler applications are addressed.

## 4. ISSUES WITH THE CURRENT FORM OF THE URBAN FORREST BILL

HIA holds a number of concerns about the overall extent to which the Urban Forest Bill has expanded the regulation of trees. Following is an overview of the key issues.

### 4.1 HEIGHT OF REGULATED TREES

Under the Urban Forest Bill, trees will be regulated if they are 8 metres or taller (this is currently 12 metres), or have a canopy 8 metres or wider, or have a trunk circumference of 1 metre or more at 1.4 metre above natural ground level.

HIA has concerns with a height of 8-metres, which will obviously draw many more plants into the list of regulated trees. This has a significant likelihood of increasing the administrative burden on the industry and approval authorities.

The following diagram (figure 2) gives an indication of the scale of an 8-metre regulated tree.



Figure 2 - Regulated tree scale

It is clear that the reduction to 8 metres will capture a significantly higher number of trees that are of a much smaller scale and include plants that are of limited environment or heritage-based significance.

In our 2019 submission to the *Review of the Tree Protection Act 2005 (ACT)*, HIA expressed reservations about the prospect of too much authority with respect to decision-making being concentrated in one position.

HIA argued that to streamline the process for tree management and increase efficiency, the increased codification of offset measures and objective guidelines could provide certainty for homeowners, developers and the community, with less reliance on approval processes.

As detailed further below, these concerns appear somewhat founded in the drafting of the Urban Forest Bill, and by drastically increasing the scope of trees that will come under the purview of the Conservator, there is a real risk that development will be stalled in many brownfield sites.

## **4.2 FREEDOM OF CHOICE FOR LANDOWNERS**

The Urban Forest Bill does not require that the Conservator must make an attempt to offer landowners a choice between planting new trees or making a financial contribution.

The Urban Forest Bill gives the Conservator the ability to decide to offer a canopy contribution scheme upon ‘either or both’ of the conditions that (a) the applicant must make an ‘on-site canopy contribution’ to the land’s tree canopy, or (b) the applicant must pay a ‘financial contribution’.

In other words, the Conservator is not obligated to give each landowner both of these options, even if the Conservator has already decided that a canopy contribution agreement is appropriate.

HIA does not believe that there is any proper justification for granting the Conservator this power. On the contrary, landowners should not be subjected to the possibility that they may effectively be forced to plant new on-site trees, despite being perfectly willing to instead pay a financial contribution, as is contemplated by the overall scheme.

HIA submits that landowner should always be presented with the option of making a financial contribution, and would ask that the Standing Committee considers this issue within the context of:

- Ever-shrinking parcels of residential land in the ACT; and
- The upcoming commencement of Territory Plan Variation 369, which will already introduce significant requirements as to the amount and quality of canopy coverage which must be present as a part of new residential developments.

With respect to Variation 369, HIA makes the observation that landowner’s risk being ‘charged twice’ with respect to tree removal and replacement as a result of the Urban Forest Bill. If a landowner is required to pay a financial contribution as the result of a tree removal, they may then – under the planning rules – be required

In short, if a landowner is going to be required by another piece of legislation to make a contribution to the ACT tree canopy target (a condition that must be met before they will receive a Certificate of Occupancy), then this should be recognised and accounted for when the removal of a tree to facilitate the development is contemplated.

## **4.3 CERTAINTY FOR APPLICATIONS**

The Urban Forest Bill does not provide landowners with a reasonable level of certainty that the Conservator will promptly indicate support for the majority of applications, so long as the landowner is willing and able to enter into a canopy contribution scheme.

HIA notes that the *Planning and Development Act 2007* (ACT) already contains a requirement that, if an entity (e.g., the Conservator) does not provide advice to the LPA within 15 working days of a referral, the Planning and Land Authority ('PLA') can take the entity to have supported the development application.



HIA has received feedback to the effect that the PLA rarely utilizes these provisions and will typically grant the Conservator an extension as a matter of course.

Furthermore, when giving advice about tree protection, the Urban Forest Bill does not require the Conservator to balance whether, in all the circumstances, some aspect of a landowner's application justifies the potential delay and expense of a refusal to indicate support, in light of the availability of the canopy contribution agreement scheme. It is possible that these types of considerations may be included within 'anything else the conservator considers relevant', but the Conservator has no explicit obligation to do so.

In HIA's view, it would be appropriate for the Urban Forest Bill to be drafted in a way that enshrines support for a canopy contribution agreement as the default outcome of each application, unless the Conservator is satisfied of exceptional reasons for refusing to do so.

#### **4.4 NO INCENTIVE TO REDUCE DEVELOPMENT APPLICATIONS**

The Urban Forest Bill does not incentivise the Conservator to minimise the amount of development applications which will require the intervention of the PLA.

As was briefly noted above, even if the Conservator does give a prompt indication that a development application will not be supported, a landowner will inevitably be met with delays and additional expenses.

For example, in an application involving a regulated tree on the 'merit track', a landowner would then need to satisfy the PLA that it should give an approval which is inconsistent with the Conservator's advice. In doing so, the PLA must consider any applicable guidelines, the objects of the territory plan and any realistic alternative to the proposed development.

Additionally, even if the PLA does then approve the development application, the wording of the Urban Forest Bill appears to require that the landowner must still enter into a canopy contribution agreement with the Conservator before the application can proceed.

In the event that the Conservator was to regularly refer 'unexceptional' applications to the PLA, which were then approved despite the Conservator's advice, those applications would then simply be returned to the Conservator.

In HIA's view, this is not an acceptable outcome. Landowners should be rewarded for promptly indicating a willingness to enter into a canopy contribution agreement and should not be made to enter into such an agreement after being required to successfully petition the intervention of the PLA.

As such, the Urban Forest Bill should exempt landowners from the requirement to enter into a canopy contribution agreement once (i) a landowner has already had their application denied by the Conservator, and (ii) the PLA has elected to make a decision which is inconsistent with the Conservator's advice. The Urban Forest Bill already contains a list of exemptions to which this provision could be added.

HIA encourages the Standing Committee to undertake a comprehensive review of the Urban Forest Bill; the Government must act now in order to ensure that the proposed scheme of 'canopy contribution agreements' is designed in way which can realistically improve Canberra's tree management system.