Australian Capital Territory

Urban Forest (Approval Criteria) Determination 2022 (No 1)

Disallowable instrument DI2022—##

made under the

***Urban Forest Act 2022,* section 20 (Approval Criteria)**

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1 Name of instrument

This instrument is the *Urban Forest (Approval Criteria) Determination 2022* (No 1).

2 Commencement

This instrument commences on the day after notification.

3 Determination

I determine that the criteria for approving an activity that would or may damage a protected tree or be prohibited groundwork in the protection zone for a protected tree or a declared site are as set out in Schedule 1.

Chris Steel MLA
Minister for City Services

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Schedule 1

Determination of criteria for the purposes of section 20 of the *Urban Forest Act*.

Regulated Trees

1 Approval to damage a regulated tree

(1) The Conservator of Flora and Fauna (the Conservator) may give an approval to damage a regulated tree under section 28 when:

(a) the tree is in decline and its life expectancy is short; or

(b) the tree represents an unacceptable risk to public or private safety; or

(c) the tree is shown to be causing or threatening to cause substantial damage to a substantial building, structure or service; or

(d) the location of the tree is inappropriate given its potential size and growth habit (excluding remnant eucalypts); or

(e) the tree is causing excessive shading to the lessee's premises, or neighbouring premises, during winter between the hours of 9am to 3pm and pruning is not sufficient to remedy this (excluding remnant eucalypts) and is supported by shadow diagrams; or

(f) where the tree is part of a close planting of a number of trees, the removal of the tree will allow the other trees to develop; and

all other reasonable remedial treatments and risk mitigation measures have been determined to be ineffective.

(2) When deciding whether the criteria in paragraph 1 are met, the Conservator may consider:

(a) any exceptional circumstances that have been raised by the applicant, taking into account advice from the Tree Advisory Panel;

(b) the importance of the tree in the surrounding landscape; and

(c) if the tree is a species listed on schedule 2, whether the tree has ecological importance to the local environment.

(3) In considering whether criteria 1(1)(b) and (c) are met the Conservator must assess whether the removal of the tree is urgently required in accordance with section 32 of the Act.

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(4) The Conservator may give an approval under section 28 of the Act to undertake major pruning on a regulated tree when:

(a) the work is required:

(i) as a remedial treatment; or

(ii) in the general interests of the health of the tree; or

(iii) to reduce an unacceptable risk to public or private safety; or

(iv) to reduce the risk of damage or prevent further damage to a substantial building, structure or service.

(b) the tree is substantially affecting solar access to the lessees lease, or neighbouring lease, during winter between the hours of 9am to 3pm and minor pruning is not sufficient to remedy this (excluding remnant eucalypts).

(5) The approval of lopping should only be considered when the criteria in clause 1 are met and the retention of the tree is considered necessary.

Example: Where the retention of the tree is necessary to maintain habitat or heritage values.

2 Approval to undertake prohibited groundwork within the tree protection zone of a regulated tree

The Conservator may give an approval under section 28 of the Act to carry out groundwork within the tree protection zone of a regulated tree where the groundwork will have minimal impact on the tree if the activity complies with the conditions stated in the approval.

Registered Trees

3 Major pruning of registered tree

(1) The Conservator may give an approval for major pruning of a Registered Tree under section 28 of the Act if the work is required:

(a) to maintain the health and safety of the tree; or

(b) to maintain clearance from services; or

(c) as a remedial treatment.

(2) The Conservator may only give an approval for major pruning of a Registered Tree under criterion 3(1) if the work is considered necessary and will not:

(a) substantially alter the tree's shape and form; or

(b) cause the tree to become unsafe; or

(c) result in the decline and death or necessitate the removal or destruction of the tree.

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4 Approval to undertake prohibited groundwork within the tree protection zone of a registered tree

The Conservator may give an approval under section 28 of the Act to carry out groundwork within the tree protection zone of a registered tree where the groundwork will have minimal impact on the tree if the activity complies with the conditions stated in the approval.

Declared Sites

5 Approval to undertake prohibited groundwork within a declared site

(1) The Conservator may give approval under section 28 of the Act to carry out prohibited groundwork within a declared site if satisfied that the area of the site affected by the prohibited groundwork, and any other prohibited groundwork done with or without approval in the past 12 months, would be less than 10%.

(2) The Conservator may approve prohibited groundwork within a declared site if, on advice from the ACT Planning and Land Authority, the groundwork is necessary to achieve broader strategic planning objectives of the Territory Plan.

Examples

6 Examples of reasonable remedial treatments or measures for a regulated tree

Examples of reasonable remedial treatments or measures for a regulated tree are:

(1) crown thinning, selective pruning or reduction pruning of trees to lessen wind resistance, to reduce weight of limbs, to reduce competition, to increase light penetration and air circulation through the crown, undertaken every three years.

(2) general pruning to remove dead, diseased, dying, or defective and conflicting branches deemed to be dangerous or detrimental to the tree, undertaken every two years.

(3) selective or formative pruning, to remove identified branches that encroaching on utilities or buildings, undertaken every two years.

(4) crown lifting for pedestrian or vehicular access undertaken every two years.

(5) thinning, selective pruning or reduction pruning on trees to provide solar access and property alignment to private dwellings undertaken every two years.

(6) annual inspection by a qualified arboriculturist to undertake risk and hazard assessment.

7 Examples of reasonable risk mitigation measures

Examples of reasonable risk mitigation measures are:

(1) the erection of fences to prevent access under the tree or an area of risk;

(2) landscaping to discourage access under the tree or an area of risk; or

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(3) the erection of signage warning of possible risk.

8 Examples of damaging activities that may be approved for a regulated tree

Examples of the kinds of activities for which an approval for damaging activity on a regulated tree may be granted are:

(1) removal of unsuitable or hazardous trees subject to replacement plantings being undertaken where necessary; or

(2) pollarding on deciduous trees grown for horticultural amenity or on native trees to retain habitat values; or

(3) remedial pruning to prolong the useful life expectancy of damaged trees; or

(4) root pruning to ameliorate damage to built or natural structures.

The list of examples set out in sections 6, 7 and 8 do not limit the matters that the Conservator may consider.

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Schedule 2

Botanical Name	*Common Name*
Acacia melanoxylon	Blackwood
Casuarina cunninghamiana	River oak
Eucalyptus blakelyi	Blakely's red gum
Eucalyptus bridgesiana	Apple box
Eucalyptus dives	Broad leaf peppermint
Eucalyptus goniocalyx	Bundy
Eucalyptus mannifera	Red spotted gum
Eucalyptus nortonii	Silver bundy
Eucalyptus pauciflora	Snow gum
Eucalyptus polyanthemos	Red box
Eucalyptus radiata	Narrow-leaved Peppermint
Eucalyptus rossii	Scribbly gum
Eucalyptus rubida	Candle bark
Eucalyptus melliodora	Yellow box

List of local ecologically beneficial species for purposes of criterion 1(2)(c).

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