

OFFICE OF THE COMMISSIONER  
FOR SUSTAINABILITY AND  
THE ENVIRONMENT

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To whom it may concern

### **Inquiry into Urban Forest Bill 2022**

The Commissioner for Sustainability and the Environment is an independent statutory position established by the *Commissioner for Sustainability and the Environment Act 1993*. My Office advocates for an environmentally sustainable future for the Territory and supports reforms that work to protect the many values of the ACT's unique environment.

I would like to commend the revised *Urban Forest Bill* for making amendments based on feedback from the draft consultation phase, including that of the Conservation Council ACT Region.

However, the Bill can be improved, particularly regarding its lack of differentiation between native and exotic trees. As outlined in our submission for the *Draft Urban Forest Bill*, local native species should be afforded additional levels of protection above exotics. This is supported by the Territory's *Action Plan to Prevent Loss of Mature Native Trees* (the *Action Plan*), released for consultation in March of this year.

#### ***Mature native tree protections***

The arguments put forward in the *Action Plan* for the importance of local native trees in the ACT


landscape, and the urgent need to protect these increasingly scarce trees, should be given weight in

the *Urban Forest Bill*. Native trees should be afforded additional protections beyond those given to exotic trees in order both to protect existing mature trees and ensure that young trees have the opportunity to grow to maturity.

The threshold for removal of mature local native trees on private property should be higher than for exotic species. While human safety must be the primary concern in deciding whether a tree is dangerous and should be removed, native tree removal should always be the absolute last resort and requires a thorough assessment process to determine genuine safety risks.

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In their [submission for the Draft Urban Forest Bill](#), the Conservation Council ACT Region noted that the dimensions a tree must have in order to be granted protection as a ‘regulated tree’ are considerably higher in the ACT than they are elsewhere in Australia.<sup>1</sup> The following table presents a comparison of ACT’s proposed dimensions against an average of analogous tree protection requirements across Australia.

	<b>ACT</b>	<b>Australian Average</b>
<b>Tree Height</b>	8m	4.6m
<b>Tree Canopy Width</b>	8m	3m
<b>Trunk Circumference</b>	1m	68cm

In our submission for the *Draft Urban Forest Bill*, my Office recommended that no minimum height for protection should apply to native trees. The latest version of the Bill did not incorporate this feedback. At the very minimum, a requirement should be in place for protection of native trees to align with the Australian average, while leaving exotic trees with the proposed ACT dimension requirements.

**Recommendation 1:** That the ‘regulated tree’ dimension requirements for native species are removed entirely, or at the very least lowered to align with the Australian average.

### ***Protected exotic trees and climate resilience***

Where mature exotic trees have been subjectively ascribed a European heritage value and protected status, these trees should be replaced with climate-appropriate species, preferably native, when they reach the end of their natural life or are removed for other reasons. An exotic tree should not be treated with the same approach as a built structure for the purposes of European heritage management. Any opportunity to improve the climate resilience of Canberra’s urban forest should be pursued; this should be a higher priority than protecting subjective heritage values.

Another consideration in this space is the potential climate impact of dense-foliage evergreen trees blocking solar access in residential areas. Many homes are reliant on access to solar for energy efficiency, both for energy production (e.g. solar panels) and energy reduction (e.g. passive solar design). There is growing public concern for this issue.

**Recommendation 2:** That heritage protection afforded to exotic trees should end when the tree in question dies or is removed. Such trees should be replaced with climate-appropriate native species from approved ACT Government planting lists.

**Recommendation 3:** That consideration of solar access be taken into account in the protection of dense-foliage evergreen exotics in residential areas. In cases where these trees have a significant impact on nearby residents’ energy use, the benefits of

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<sup>1</sup> Tom Morrison, Joanna Wells and Craig Wilkins, *Comparison of Australia’s Tree Laws* (Conservation Council South Australia, 2021)

protecting them need to be weighed against the environmental advantages of replacing them with an appropriate native species that allows for solar access.

***Clarity around the definition of a ‘registered tree’***

The *Urban Forest Bill* states that tree registration criteria are determined by the Minister, and provides no further guidance or clarification. The Bill should explicitly state that while the Minister has the power to determine the criteria, the criteria must align with the intent of the Bill and its objectives.

The Minister’s determination of registered tree criteria is a disallowable instrument. While the instrument is a separate document to the Bill and may therefore fall outside the intended scope of the present inquiry, the Office feels it is worth noting due to its influence over the application of the Bill in practice. The criteria within the current instrument (*Tree Protection* [DI2018-50](#)) list ‘scientific value’ last of three categories, after the values of heritage and landscape/aesthetics. The ‘scientific value’ category encompasses all sub-criteria relating to a tree’s ecological, genetic and botanical significance – that is, its significance for reasons beyond those relating to human history, perception and enjoyment.

Listing the values in this way creates an implicit hierarchy in which a tree is portrayed to be more worthy of receiving protected status if it is pleasing to humans, rather than considering its inherent worth or its habitat value to non-human communities including threatened wildlife. Even within the ‘scientific value’ category, habitat is listed last of six sub-criteria, including one that relates to the pursuit of human knowledge of natural history. If these criteria are not intended to be read as a hierarchy, this should be explicitly stated. Otherwise, the hierarchy should be amended to address the current anthropocentric bias.

**Recommendation 4:** That the *Urban Forest Bill* be amended to state that the criteria for tree registration must align with the intent of the Bill and its objectives.

**Recommendation 5:** That DI2018-50 be amended to dispel the implication that trees are more worthy of protection for their historic and aesthetic value to humans than for their inherent ecological, genetic and botanical significance, particularly as habitat for endangered species.

Thank you for your consideration and please do not hesitate to contact me if you have any queries.

Yours sincerely



Dr Sophie Lewis  
ACT Commissioner for Sustainability  
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22 August 2022