

Australian Capital Territory

Construction Occupations (Licensing) Unit Title Landscaping Works Assessment Code of Practice 2016

Disallowable instrument DI2016–244

Made under the

Construction Occupations (Licensing) Act 2004, section 126A (Codes of practice)

1 Name of instrument

This instrument is the *Construction Occupations (Licensing) Unit Title Landscaping Works Assessment Code of Practice 2016*.

2 Commencement

This instrument commences on the day after notification.

3 Code of practice

I approve the Unit Title Landscaping Works Assessment Code of Practice in the Schedule.

4 Disapplication of Legislation Act, s47 (5) and 47 (6)

The *Legislation Act 2001*, sections 47 (5) and 47 (6) do not apply in relation to an instrument applied, adopted or incorporated under this instrument.

Mick Gentleman
Minister for Planning and Land Management
23 August 2016



Australian Capital Territory

Unit title landscaping works assessment code of practice

made under the

Construction Occupations (Licensing) Act 2004

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(see section 3)

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Part 1 Preliminary

1 Name of code

This code is the *Unit title landscaping works assessment code of practice*.

2 Dictionary

The dictionary at the end of this code is part of this code.

Note 1 The dictionary at the end of this code defines certain terms used in this Code, and may include references (*signpost definitions*) to other terms defined elsewhere in this Code.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire code unless the definition, or another provision of the code, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

Note 3 See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

3 Offences and other consequences of contravening this code

The *Construction Occupations (Licensing) Act 2004*, provides offence and other enforcement mechanisms that can result from a contravention of this code.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Part 2 Important concepts

4 What is a *landscape* and *landscaping*

In this code—

landscape means the products of landscaping;

landscaping includes landscape gardening in a an urban setting, and includes related fencing or paving, particularly to give effect to a landscape plan prepared by a landscape architect.

5 Application to assessors

In this code a reference to an *assessor* includes a reference to an entity who, under the *Construction Occupations (Licensing) Act 2004*, holds a licence that authorises the holder to provide the relevant assessment service, in circumstances where the assessment may only be done by the licence holder.

6 Object of code

An object of this code is to prescribe requirements for assessing the compliance of landscaping, and in some cases to provide methodologies for making the assessment.

7 Code scope—correlation with scope of development approval

If a provision of this code purports to require development to have been undertaken in a way that is in excess of the minimum requirements of a relevant development approval, the provision of this code may be taken to only require the development to be done in accordance with the minimum requirement of the approval, unless a requirement of another law or of a lease or licence requires to the contrary.

Examples of other law

Building Act 2004

Planning and Development Act 2007

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8 **Meaning of certain terms—correlation with *Unit Titles Act 2001***

A term used in this code has the same meaning as the term has in the *Unit Titles Act 2001*, unless this code provides a different meaning for the term.

Note 1 A term used in this code has the same meaning as the term has in the *Construction (Occupations) Licensing Act 2004*, (see the *Legislation Act*, s 148).

Note 2 The *Legislation Act*, the *Unit Titles Act 2001* and the *Construction Occupations (Licensing) Act 2004* may contain definitions and other provisions relevant to this code.

Part 3 Landscape Assessment

9 Landscaping general compliance criteria

- (1) This section applies to a block with a relevant building that has—
 - (a) been occupied, in which case it applies in respect of the latest relevant plans, if any, that were required to be complied with for the block, allowing for how the landscape may have matured since being subject to those plans; or
 - (b) not been occupied, in which case it applies in respect of the latest relevant plans, if any, that were required to be complied with for the block.
- (2) Subsection (3) prescribes the *general landscaping compliance criteria*.
- (3) The assessor must determine if publicly visible landscaping complies with all of the following that are applicable to the landscaping (the *relevant plans*)—
 - the respective development approval given under the *Planning and Development Act 2007*;
 - requirements of that Act that relate to exempt development; if no development approval was required for the landscape;
 - the relevant provisions of this code.

- (4) In this section:

building line—see the territory plan (13 Definitions).

common property—see the *Unit Titles ACT 2001*, section 13 (Common property).

exempt development—see the *Planning and Development Act 2007*, section 133 (What is an exempt development?).

general landscaping compliance criteria—see subsection (2).

landscaping—see section 4 (What is *landscaping*?)

publicly visible landscaping for a parcel of land means landscaping that—

- (a) is on or in the relevant land and can be seen by a 1.8m tall person standing on the surface of a public road from any point on the public road not more than 100m from the land; or
- (b) is between a front boundary of the land and a building line for the block; or
- (c) is located in proposed common property for the block.

Note A road verge is not part of relevant land and is not *publicly visible landscaping*.

public road—see the *Roads and Public Places Act 1937*, dictionary.

relevant plans—see subsection (3).

10 Plant species deemed to comply—identification tag

- (1) A plant is deemed to be compliant with the species requirement of the general landscaping compliance criteria if—
 - (a) the plant has a tag purporting to identify the plant’s species; and
 - (b) the assessor believes on reasonable grounds that the species identified in the tag corresponds to the respective species requirement of the relevant plans; and
 - (c) the assessor does not have a reasonable suspicion that—
 - (i) the tag was attached by a person unlikely to know, or who was reckless about knowing, if the tag was accurate in stating the species of the plant; or
 - (ii) the tag has been altered in a material particular about the species, making the tag inaccurate about the species of the plant, or
 - (iii) the tag provides false or misleading information about the species of the plant.

Example—subparagraph (i)—no reasonable suspicion

The works assessor is satisfied on reasonable grounds that the nursery that cultivated the plant, or the nursery supplying the plant, employed a person likely to know the plant's species, to attach, or direct and supervise the attachment of, the tag, or to check the accuracy of the attachment of the tag.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A plant (an untagged plant) does not fail to comply with section (1) only because it has no tag, if it is located near another plant (a tagged plant) of comparable condition to the untagged plant, and the tagged plant complies with section (1), and the assessor is satisfied on reasonable grounds that by visual inspection standing 1m from both plants, the untagged plant appears to be same species as the tagged plant.
- (3) An assessor shall not require an expert to conclusively determine the species of a plant to assist the assessor to comply with the general landscaping compliance criteria, if the certifier can otherwise determine compliance under this section.

11 Plant species deemed to comply—expert opinion

This section applies to plants that section 5 (Plant species deemed to comply—identification tag) does not apply to. An assessor must take the species of a plant to comply with the general landscaping compliance criteria if the assessor is satisfied on reasonable grounds that an expert in plant species identification has provided written and current advice, however expressed—

- (a) about the plant's species, and the certifier is satisfied that the advised species complies with the species requirements of general landscaping compliance criteria ; or
- (b) that relevant part of the landscaping, or the plant, complies with the species requirements of general landscaping compliance criteria .

Examples of experts

The holder of a qualification in landscaping, botany, or horticulture—that the Australian Qualifications Framework Advisory Board has determined is 1 of the following in the Australian Qualification Framework system—a certificate IV, diploma, advanced diploma, bachelor degree, graduate certificate, graduate diploma, masters degree or doctoral degree.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 Plant species deemed to comply—substitute equivalence

This section applies to a plant that is required to be of a particular kind in order to comply with the general landscaping compliance criteria, (a *required plant*), if the plant is not that kind because it is a *substitute plant*. The assessor must take the substitute plant as being the required plant (a *deemed compliant substitute*) if—

- (a) the assessor is satisfied on reasonable grounds that it is not practical to obtain a required plant because of lack of suitable stock being available from the ACT, New South Wales, Queensland and Victoria; and
- (b) an expert in plant characteristics satisfies the assessor with documentary evidence that the substitute plant's relevant characteristics are sufficiently equivalent to those of the required plant to achieve the same contextual effect as the required plant.

Examples of experts

The holder of a qualification in landscaping, botany, or horticulture—that the Australian Qualifications Framework Advisory Board has determined is 1 of the following in the Australian Qualification Framework system—a certificate IV, diploma, advanced diploma, bachelor degree, graduate certificate, graduate diploma, masters degree or doctoral degree.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

13 Plant species—weeds or other unspecified plants

This section only applies to a garden bed. An assessor must not take landscaping to comply with the general landscaping compliance criteria if the landscaping contains a plant, including a weed or non-weed, that is not shown in the relevant plans to be in the bed at the respective approximate location, and are not a deemed compliant substitute under section 12 (Plant species deemed to comply—substitute equivalence). For this section, landscaping does not contain a plant if the plant—

- (a) is not visible to a reasonable person standing at a single point 1m from the plant, or if the plant (including a seed, bulb or other plant generation material) is wholly buried; or
- (b) the plant is supernumerary to give effect to the landscape plan.

Example of plant supernumerary to give effect to the landscape plan

The landscape plan shows that a garden bed should be filled with 100 Royal Bluebells *wahlenbergia gloriosa*, but in order to fill the bed, 112 Royal Bluebells were planted in the bed. The extra 12 plants are supernumerary to give effect to the landscape plan.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

14 Landscape element location and extent deemed to comply

- (1) Subject to subsection (2) and to substitution permitted under section 12 (Plant species deemed to comply—substitute equivalence), an assessor may assume that a landscape element is deemed to be compliant with the location and extent requirement of general landscaping compliance criteria if—
 - (a) for a plant shown diagrammatically or otherwise in the relevant plans with a main trunk or main stalk, the plant’s main trunk or main stalk’s location complies relatively with the plan, regardless of the plan showing other information about the plant’s location or extent; and
 - (b) for other landscape elements, the elements comply relatively with the location information specified in the plan, or where the plan fails to specify location details, the relative location depicted in the plan.

Example of relative location and other information about a plant’s location and extent

A plan shows diagrammatically that 10 trees are to be evenly spaced along a boundary, but no dimensions or other location information is shown. The location of the trees complies with the plan if their trunks are relatively evenly spaced along the boundary rather than being substantially more closely spaced along part of the boundary than another part. The plan shows the mature spread of the trees’ branches will overlap to form a continuous visual barrier along the boundary, but no relevant plans specifically size or state of maturity or age of the trees. The seedlings comply with this section despite being too small to overlap and form the visual barrier in their immature state.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If a relevant plan otherwise specifically specifies the location, extent or proximity of a plant’s attributes, including its spread, branches, foliage, roots or root ball, an assessor must assume that the plant fails to comply with subsection (1) if the specification is not complied with.
- (3) Subsections (1) and (2) do not require an immature plant to comply with specified information that relates to the plant when more mature, unless the relevant plan specifically requires a plant of specified greater size, maturity or age.
- (4) For this section, other than section (1) (a), a plan does not specifically specify a plant’s attribute by only diagrammatically representing the attribute without text or dimensions that specify further particulars about the attribute.

Examples of plans showing plants—

- 1 A plan shows trees only diagrammatically from above by circles representing the spread of the plant and a dot representing the main trunk. Under subsection (1) the location of the plants' main trunks must relatively comply with the respective location of the dots. The spread of trees need not comply with the circles. The plan also shows by a dimension that the circle representing the mature spread of a shrub must be 1m away from a building. Under subsection (3) the plant must be located so that its expected spread at maturity is 1m from the building. The plant need not comply with other aspects of the circle.
- 2 A plan shows trees only diagrammatically in elevation, as a line diagram of trunk, branches and foliage. Under subsection (1) the location of the plant's main trunk must relatively comply with the respective location of the trunk shown in the plan where the trunk is shown to emerge from the ground. The height of the tree and the arrangement of and spread of tree's branches and foliage need not comply with the plan. The plan similarly shows shrubs and specifies that a particular shrub must be at least 1m tall. Under subsection (3) the shrub must be at least 1m tall from where it emerges from the ground, when planted, and the location of the plant's main trunk must relatively comply with the respective location of the trunk shown in the plan, where the trunk is shown to emerge from the ground. The plant need not comply with other aspects of the line drawing.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

15 Implantation into ground—details deemed to comply

- (1) An assessor must assume that a plant, other than ground-cover grass, is deemed to be compliant with the relevant requirement of general landscaping compliance criteria for implantation into the ground, including a bed, if—
 - (a) where no relevant implanting details are specified in the relevant plans, the plant is implanted in loam that is buried in surrounding soil, if any, and the mixture completely surrounds the plant's root ball, seed or bulb to an overall width of loam in any direction of not less than 300mm, excluding the plant. However, the roots may additionally be in a plantable compostable container buried in the loam; or
 - (b) the relevant plans show other implanting details, the specification is complied with.

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- (2) A works assessor may take a plant's implantation to comply with section (1) if the assessor—
- (a) rods near the plant to sufficient depth and at appropriate location to satisfy the assessor on reasonable grounds that the material the plant is implanted in appears when viewed from 1m away to be the material required by section (1), such as loam if that is required, and that the arrangement of the plant and surrounding material is likely to comply with section (1); or
 - (b) sufficiently observed implantation of the plant to determine compliance with (a) without further excavation; or
 - (c) is satisfied on reasonable grounds, subject to section (3), that—
 - (i) another comparable plant (the sampled plant) complies with paragraph (a) or (b); and
 - (ii) the sampled plant is part of the same landscape element, such as a garden bed, as the subject plant; and
 - (iii) from a visual inspection of the subject plant and its immediate surrounds, standing at a single point 1m from the subject plant, its implantation is comparable to the sampled plant, and is likely to have been implanted in the same compliant manner as the sampled plant.
- (3) In this section a sampled plant is only *comparable* to another plant if both plants are a similar size and both are 1 of the following—a tree, shrub, or other plant.

16 Finished surfaces deemed to comply

- (1) This section does not apply to surface mulch, nor if contrary intention appears in the relevant plans.
- (2) An assessor must assume that a plant, other than ground-cover grass, is deemed to be compliant with the relevant requirement of general landscaping compliance criteria in respect of finished surface around the plant if potting mixture, or other growing medium permitted by the relevant plans, around the plant is flush with the adjoining ground (including a bed) surface.

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- (3) Finished levels of the top of garden beds, paths, paving, and service, drainage or similar pits must not be taken as complying with the general landscaping compliance criteria unless they are flush with adjoining surfaces to avoid tripping hazards, and provide graded surface drainage that prevents localised water ponding in areas other than where ponding is permitted by the relevant plans.

Example of ponding

The relevant plans do not show any areas as permitted ponding areas. Due to post-construction consolidation of fill soils, some areas of ground surfaces have slightly subsided so as surface water would pond slightly in the depressions caused by the subsidence. The areas that pond do not comply with this section. Subsequently, the subsidence is rectified so as no ponding will occur and so surfaces comply with the relevant plans. The rectified areas subsequently comply with this section.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

17 Plant health deemed to comply

- (1) This section applies to pre-existing plants that the relevant plans require to be protected, and to plants that the plans require to be provided.
- (2) An assessor must assume a plant is deemed to be compliant with the relevant requirement of general landscaping compliance criteria for plant health if the assessor examines the plant, standing at 1 point 1 m from the plant, and sees no sign of intolerable distress, damage, attack, infestation, decay, disease, or failure to thrive.
- (3) For this section, a plant must not be taken to be unbearably distressed or diseased or failing to thrive only because it appears debilitated from lack of water, autumn leaf shedding or frost, and appears likely to recover.
- (4) This section does not apply if the assessor has a reasonable suspicion that the plant is dead or is fatally damaged or is fatally unhealthy.
- (5) An assessor must not require an expert to determine anything under subsections (1) or (2) unless the assessor believes it is reasonably necessary to do so because of the assessor's inability to adequately assess plant health in accordance with this section.

18 Plant support deem to comply

- (1) An assessor must assume a plant is deemed to be compliant with the relevant requirement of the general landscaping compliance criteria for plant support if the plant is supported in accordance with staking or other support provisions shown in the relevant plans.
- (2) Unless contrary intention appears in the plans, a plant fails to comply with the support requirements of the general landscaping compliance criteria if they are tied to timber, plastic or bamboo stake, which is less than 10mm thick.

19 Soil depth deemed to comply

- (1) An assessor may take the depth of soil in a delineated landscape element, such as a garden bed, to comply with the general landscaping compliance criteria for soil depth, if the assessor determines that the element has compliant depth using 1 of the following methods. The assessor—
 - (a) rods in a representative part of the element, to a sufficient depth and at appropriate locations to satisfy the assessor on reasonable grounds of the likely nominal depth of soil for the element; or
 - (b) sufficiently observed placement of the soil to determine compliance with (a) without excavation.
- (2) If the relevant plans do not show a soil depth the assessor need not assess the soil depth.
- (3) Subsection 1 does not require rodding in more than 1 location per 100m² maximum plan area of an element if the assessor is satisfied on reasonable grounds that the results of rodding in that location are indicative of the results of rodding in the subject 100m² maximum plan area per element.
- (4) Rodding must be done with due care to avoid damage to buried services including pipes and cables.

20 Landscaping not to contain rubbish

- (1) An assessor must not take landscaping to comply with the general landscaping compliance criteria if the landscaping contains rubbish or builder's rubble that is visible (*surface rubbish*) to a reasonable person standing 5m from the rubbish or rubble, or that otherwise displaces soil, mulch or other material required by the relevant plans (*buried rubbish*).

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- (2) Unless the assessor has a reasonable suspicion that a particular element of landscaping contains buried rubbish, the assessor need not test for the presence of buried rubbish.
 - (3) In this section *rubbish* means artificially discarded waste not intended to have a relevant use. Relevant uses might include mulch, compost, soil fill, artwork, or recycled or reused plastic landscaping products.

21 Mulch

- (1) An assessor must not take landscaping to comply with the general landscaping compliance criteria if—
 - (c) a mulch layer is closer than 50mm of a plant's stem; and
 - (d) if the landscaping is a garden bed—
 - (i) the bed does not contain mulch in accordance with the relevant plans; or
 - (ii) if the relevant plans do not require mulch, the surface of the bed is not covered in a mulch layer that has a minimum depth of 50mm to 75mm.
- (2) An assessor may take the depth of a layer of mulch in a landscape element, such as a garden bed, to comply with subsection (1) if the assessor determines the nominal depth of mulch of the element has compliant depth, using 1 of the following methods. The assessor—
 - (a) excavates, and reinstates, a test pit in a representative part of the element, of sufficient depth and of appropriate location to satisfy the assessor on reasonable grounds of the likely nominal depth a mulch for the element; or
 - (b) sufficiently observed placement of the mulch to determine compliance with (a) without excavation.
- (3) In this section a *landscape element* means a delineated expanse of ground such as garden bed.

22 Garden beds—separation barriers

Unless contrary intention appears in the relevant plans, an assessor must not take a garden bed as complying with the general landscaping compliance criteria if the bed is not separated from any adjoining grassland or lawn by garden edging that forms a barrier to help prevent the grass invading the bed, and helps prevent mulch spreading onto the grassland or lawn.

23 Public footpaths and pedestrian crossing not to be interrupted

Unless contrary intention appears in the relevant plans, an assessor must not take a driveway as complying with the general landscaping compliance criteria if it interrupts a footpath on a public road verge or interrupts a pedestrian crossing designated within a public road.

Examples of driveway interrupting and not interrupting a footpath

A footpath on a public road verge was originally of continuous concrete. A driveway of unit pavers subsequently intersects the footpath so that the concrete footpath ends at each side of the driveway, and so between each end the footpath has been replaced with the driveway's pavers. The driveway interrupts the footpath. Had the driveway been of concrete similar to the footpath and replaced the footpath where it intersected the footpath, matching the finished levels of the replaced section of footpath, the driveway would not interrupt the footpath.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

24 Grass areas deemed to comply

- (1) Unless contrary intention appears in the relevant plans, an assessor must take an area that is required by general landscaping compliance criteria to be grassed, as being grassed if the area is—
 - (a) turfed or grassed; or
 - (b) seeded in accordance with the seed supplier's written directions; and
 - (c) the soil is stabilised to prevent soil erosion; or
 - (d) a combination of (a) with (b) and (c).
- (2) An assessor may take an area to comply with paragraph (b) if the assessor—
 - (a) can see seeds that are likely to be grass seeds in the area from standing at a single point adjacent to the area and uncovering the seeds from the soil or soil stabiliser or mulch if need be; and
 - (b) believes on reasonable grounds that those seeds represent the nominal rate of broadcasting such seeds throughout the area, and that that rate is sufficient to grass the area if the seeds germinate and propagate at normal rates.

25 Paving—prohibited bumpiness

Unless contrary intention appears in the relevant plans, an assessor must not take hard paving materials as complying with the general landscaping compliance criteria if the material is in a hard-paved area likely to be used by a person in a wheelchair or other wheeled mobility assistance device and the paving produces a bumpy path.

Examples of material that might produce a bumpy path

Stepping stones, cobblestones, segmental paving or tiling with large recessed joints or gaps, a corrugated finish.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

26 Subsidence—not compliant if detrimental

If an assessor believes an area of relevant ground or landscaping element has locally subsided to the extent that the finished surface is detrimental to the expected purpose or intent the assessor must not take the ground or element as complying with the general landscaping compliance criteria

Example of non compliant subsidence

An area of ground was intended to be grassed and flat, but local subsidence over a backfilled trench produces a hollow in the grass that could cause a person to stumble while walking across the grass, or that could become waterlogged in rain because of reduced surface drainage.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

27 Erosion protection

If an assessor believes an area of relevant ground or landscaping element is not sufficiently protected to prevent surface material continually eroding by surface water from rain the assessor must not take the ground or element as complying with the general landscaping compliance criteria.

Dictionary

(see s 2)

Note The Legislation Act, the *Unit Titles Act 2001* and the *Construction Occupations (Licensing) Act 2004* may contain definitions and other provisions relevant to this code.

general landscaping compliance criteria—see section 7.

landscape—see section 4.

landscaping—see section 4

rod means to probe the ground with a rigid rod of nominally 5mm diameter to determine the depth of certain granular ground materials, particularly by feeling for changes in rate of ground penetration or force needed to penetrate the ground.