

Australian Capital Territory

# Urban Forest (Registration and Cancellation Criteria) Determination 2023

Disallowable instrument DI2023-271

made under the

Urban Forest Act 2023, s 52 (Criteria for registration and cancellation of registration)

## EXPLANATORY STATEMENT

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### Overview

Section 52 of the *Urban Forest Act 2023* allows the Minister to determine

- (a) criteria (the *registration criteria*) for the registration of a tree; and
- (b) criteria (the *cancellation criteria*) for the cancellation of a tree's registration.

The registration criteria apply to assessments of trees or groups of trees that are being considered for inclusion onto the Tree Register.

The cancellation criteria apply to assessments of trees or groups of trees on the ACT Tree Register that are being considered for cancellation.

### Human rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters.

In this case, Cultural and Other Rights of Aboriginal and Torres Strait Islander Peoples are promoted. This right seeks to strengthen Aboriginal peoples' enjoyment of their culture and ability to engage in their distinct cultural practices relating to their use and enjoyment of land, natural resources and place. The inclusion of cultural significance as a Criteria for Registration of trees recognises the value of local Aboriginal cultural heritage and ongoing cultural practices relating to trees in the ACT.

### Climate Change

Transport Canberra and City Services anticipates that the ACT Tree Register will have a positive impact on climate change. The ACT Tree Register protects the most significant trees in the ACT and promotes environmental values in the community.

## **Outline of Provisions**

### **Section 1 Name of instrument**

This section names the instrument the *Urban Forest (Registration and Cancellation Criteria) Determination 2023*.

### **Section 2 Commencement**

This section states that the instrument commences on 1 January 2024.

### **Section 3 Determination**

This section provides for the determination of criteria for tree registration and cancellation of registration in Schedule 1.

### **Section 4 Revocation**

This determination revokes the previous determination (DI2018–50).

The determination takes effect on 1 January 2024.

## ***Schedule 1***

**Paragraph 1** establishes the values and criteria that the Conservator may use to include a tree on the Tree Register. The paragraph provides a statement about the object of each value and a series of criteria.

### **Natural or Cultural heritage value**

The object of this value is to identify trees that are of particular importance to the community due to their intrinsic heritage values. This may include Aboriginal culturally modified trees such as scar trees or a tree that is closely associated with person or event of historic importance.

### **Landscape and aesthetic value**

The object of this value is to identify trees that are of particular importance to the community due to their substantial contribution to the surrounding landscape. It should be noted that for a tree to be considered to be of landscape and aesthetic value, the Conservator must be satisfied that it is situated in a prominent location when viewed from a public place.

### **Scientific and Ecological Value**

The object of this value is to identify trees that are of particular importance to the community due to values associated with their ecological, genetic, or botanical significance or ability to substantially contribute to the scientific body of knowledge and understanding.

**Paragraph 2** enables the Conservator to consider a tree for the Tree Register on the basis of its value when in the context of a group of trees. This criterion would be

applied when several trees are nominated due to the group having particular value to the community. Whilst each individual tree may not meet the criteria in its own right, it may be considered an important component of a group of trees that do meet the criteria when considered as a whole.

**Paragraph 3** requires that the Conservator considers whether the tree would meet the criteria for cancellation of registration. This is intended to ensure that a tree that would not, upon registration, qualify for cancellation of registration.

**Paragraph 4** provides criteria that the Conservator may use when considering a request to cancel the registration of a tree. The conservator may cancel the registration if, for some reason or another, it no longer meets any of the criteria for registration in paragraph 1. The Conservator may also consider cancelling a registration if the tree has become dangerous or is causing substantial damage to a substantial building, structure or service. This latter criterion is qualified by the requirement that the damage will necessitate ongoing and extensive remediation measures.

**Paragraph 5** provides criteria that enables the Conservator to cancel the registration of a tree if, on advice from the territory planning authority; the registration of the tree will significantly compromise the broader strategic planning objectives of the Territory Plan.

**Paragraph 6** provides criteria that enables the Conservator to consider the relative value of the tree, as assessed against the criteria in paragraphs 1 and 2, when considering whether Paragraph 5 is met.

**Paragraphs 7 & 8** provide examples of reasonable remedial treatments and risk mitigation measures to clarify the sorts of activities that may be considered under paragraph 1.