

Urban Forest (Molonglo Town Centre) Declaration 2026 (No 1)

Disallowable instrument DI2026–14

made under the

Urban Forest Act 2023, section 137 (Power to apply or disapply legislation to entities or activities)

EXPLANATORY STATEMENT

Section 137 (1) (b) of the *Urban Forest Act 2023* (the *Act*) allows the Minister to declare that a provision of the Act does not apply to a stated entity or activity. Section 48 (1) (b) of the *Legislation Act 2001* provides that a power given under an Act to make a statutory instrument includes the power to make an instrument that applies differently by reference to stated exceptions or factors.

Overview

The Act commenced on 1 January 2024 and repealed and replaced the *Tree Protection Act 2005*. The revised explanatory statement (the *Act's ES*) that accompanied the bill stated that an objective was to extend protections to the most valuable trees in future urban areas. The Act's ES also stated that the legislation would extend this protection to “registered and remnant trees in future urban areas”.

A drafting error has resulted in an unintended consequence of extending protection to all trees in future urban areas, rather than just registered and regulated trees. The way that protection is provided is:

- Section 8 of the Act defines ***built up urban area*** for the purpose of application of the Act, which includes a number of zones identified in the Territory Plan. Specifically, residential zones (RZ), commercial zones (CZ), community facility zone (CFZ), industrial zones (IZ) and urban open space zone (PRZ1); and
- Section 9 (a) (iii) of the Act includes within the definition of ***protected tree*** trees located in the built-up urban area on public land.
- The blocks that are proposed to be developed into the Molonglo Town Centre (***MTC***) are public land and zoned various zones under the Territory Plan, with each block zoned at least one of the zones contained in section 8 of the Act.

This has the result of including the land within the definition of built-up urban area and triggers section 9 (a) (iii), making all trees on the land protected trees.

The original intent to apply protection to only registered and remnant trees is reflected in section 9 of the Act, which defines what constitutes a protected tree, with paragraph (b) specifying that a protected tree includes a registered or remnant tree on land in a future urban area or an area that is the subject of a subdivision design application.

Despite the provisions applying in an unintended way, the Suburban Land Agency (*SLA*) has made significant effort to retain as many trees as possible. This has been done in line with the Urban Forest Strategy 2021-2045, which acknowledges that trees provide shade to cool urban areas, reduce stormwater flows and reduce airborne pollution and greenhouse gas emissions.

In balancing the need to retain established trees there is a need to acknowledge this must also be balanced with other outcomes including housing, social, community, ecological and conservation outcomes. The MTC is being planned to make best use of limited land through a well-considered urban structure that will support around 7,000 dwellings, retail and commercial development, ACT Government buildings and services, and high-quality public spaces. The proposed tree retention reduces the developable area requiring MTC to be a compact higher density town centre to achieve the development yield, services and facilities required for the Molonglo Valley.

Consideration of Green Star is also informing the approach, ensuring environmental and social sustainability, climate resilience and environmental outcomes are embedded in the design from the outset. To support a higher density town centre, integration of active travel, public transport and open space recreation opportunities are proposed to achieve a walkable town centre and reduction in motor vehicle usage.

The updated masterplan coordinates built form, orientation and microclimate design to ensure comfortable streets and strong urban amenity, and draws on a Designing with Country framework that recognises the cultural significance of sky country, deep country and water country. This includes bringing water meaningfully into the urban environment through the integration of waterways and ponds in a way that reflects their cultural importance and strengthens connections between people, place and landscape. Environmental requirements under the *Urban Forest Act 2023*, *Nature Conservation Act 2014* and Commonwealth approvals are being actively managed, with the Molonglo River Reserve serving as the designated environmental offset for necessary disturbance.

In preparing a masterplan design for the MTC, the SLA investigated design options at both ends of the spectrum: retaining as many trees as possible and removing as many trees as would be required to gain a maximum dwelling yield. Neither option is considered suitable. The option that retains maximum trees sacrifices design elements which are required for a functional town centre that will meet the needs of Molonglo residents for decades to come, Conversely, an approach to achieve maximum dwelling yield sacrifices too many protected trees and important waterways. The design on which this instrument is predicated seeks to balance the need for a functional, lively, economically viable town centre with the need to conserve protected species as established mature trees. This balanced outcome currently falls short of the 7,000

dwelling yield indicated for MTC, however, is considered to be an appropriate trade-off to preserve environmental, biodiversity and conservation outcomes. Potential to uplift yield through additional height is being investigated by the SLA and the City and Environment Directorate.

Human Rights

The HR Act requires public authorities to act consistently with human rights. Section 40B specifically makes it unlawful for a public authority to fail to give proper consideration to a relevant human right.

On 17 September 2025 the ACT Legislative Assembly passed the *Human Rights (Housing) Amendment Act 2025* (the **Housing Act**). The Housing Act introduces new section 27D into the *Human Rights Act 2004* (the **HR Act**). Section 27D recognises that everyone has a right to adequate housing. This provision will commence on 1 January 2027.

The development of the Molonglo Town Centre will provide additional housing for residents in the ACT, supporting access to housing. This instrument removes legislative barriers to permit removal of protected trees in order to allow development to occur.

Section 27C of the HR Act provides a right to a clean healthy and sustainable environment. The design of the town centre for Molonglo has taken environmental sustainability into account and aims to provide connected open green spaces.

Climate Change

While the removal of trees may have an impact on climate change, it is negligible in the scheme of trees retained and other environmental factors.

Outline of Provisions

Clause 1

Clause 1 sets out the name of the instrument.

Clause 2

Clause 2 sets out the commencement date of the instrument, being the day after the day it is notified.

Clause 3

Clause 3 sets out the declaration being made. Specifically, clause 3 sets out that the *Urban Forest Act 2023* does not apply to the Suburban Land Agency on certain land in Molonglo.

Clause 4

Clause 4 sets out the conditions by which activities are permitted under the declaration being made under clause 3. Specifically, this clause requires SLA retain a

number of trees including all registered trees, all hollow bearing trees, and all wedge tailed Eagle Habitat Trees. This clause sets out the trees identified as Schedule 1.

Clause 5

Clause 5 contains definitions for the purpose of the instrument.