



## **Submission to Review of the Tree Protection Act 2005**

The ACT Chapter of the Australian Institute of Landscape Architects (AILA) welcome the ACT Government's review of the Tree Protection Act 2005, and commend setting of a 30% tree cover target.

**AILA** is the growing national advocacy body representing over 3,000 active and engaged landscape architects, promoting the importance of the profession today and for the future. Committed to designing and creating a better Australia, landscape architects have the skills and expertise to solve macro issues with innovative integrated solutions. Landscape architects contribute leadership, creativity and innovation as they strive to collaborate to achieve better health, environmental, social and economic outcomes. From citywide strategies to the redesign of local parks, landscape architects are making places and spaces more sustainable and productive

### **Overview of challenges facing renewal and expansion of the Urban Forest**

In addition to climate change and increased plot ratio of buildings, we consider the following to be major impediments to the capacity of Landscape Architects to positively affect replenishment of urban trees:

1. Prioritisation of engineering guidelines for roads, driveways, active travel infrastructure over trees, such as:
  - permissible offsets from paths of travel to trees
  - dimension of active travel paths and multiplicity of path types
  - commitment of site area to waste handling
  
2. Dominance of the Utilities Act enabling utility authorities to implement their capacity to:
  - dictate what sometimes seem unreasonable offset clearances between proposed trees and services
  - preclude replacement plantings where the original significant trees did not comply with contemporary offset and clearance controls
  - cause the removal of trees by rejection of alternative methods of exhuming, abandoning, upgrading underground services
  - limit the potential for new trees by rejecting innovative planting techniques such as structural soils, root barriers, etc.
  - construct elements such as earth mats without consideration or consultation of their effect on tree plantings
  - approve engineering design of utilities networks without knowledge or due regard for the presence of existing and proposed trees



- carry out works without due regard to the health of trees, cause damage to tree roots and branches
  - Recommendation for the ACT Government to:
    - Revise the offsets to increase opportunities for trees
    - Include the requirements for tree planting in the engineering guidelines so they are designed and allowed for at the early stages of the design process
    - Prioritise guidelines in a more targeted fashion that promote the planting of certain sized canopy trees for certain areas
    - Revise the waste handling requirements to reduce the area of hard pavement and height requirements of vehicles
3. Risk-averse culture within Government, where the presence of tree canopy is considered, above all, a risk, leading to unnecessary conditions. For example, the rejection of planting proposals on new developments in which any foliage extends beyond private lease boundary into a road reserve. The impact of this and other restrictions to planting canopy trees is accumulative, such that the opportunity for any tree canopy cover in many areas is non-existent. We recommend the removal of these requirements, noting that this will help to achieve the Government's 30% canopy cover and improve consistency in Government messaging to industry.
  4. The prevalence of 'Design and Construct' project delivery systems, whereby the detailed design of tree-impacting utilities is deferred until the construction phase. The real impact on trees are therefore not known at time of Development Application / Tree Management Plan preparation... after which the fate of the trees can be at the mercy of the builder and trades. We recommend either a) stop using the Design and Construct system, or b) require the Design and Construct system to include achieving approvals at critical stages.
  5. Discontinuation of Landscape Architect's role through the life of a project, for example the engagement of a Consultant team at the discretion of the delivery-phase project manager (often a Builder), which often results in an absence of any Landscape Architect /Arborist commission to monitor and certify tree management outcomes. We recommend the Project Manager be required to engage a suitably qualified AILA Registered Landscape Architect to provide advice during the construction phase.
  6. The de-valuing of historically advantageous species by their inclusion on Pest Plant / Weed Plant lists. Many of the significant tree plantings which contribute greatly to the Garden City character and microclimate of Canberra ... Platanus, Populus, Ulmus, Pinus will never be replicated or even sustained.
  7. The move toward minimum soil volume, minimum tree spacing, etc. which, though well intentioned to catalyse the design of paths, roads, basements, driveways, servicing etc., can have unintended consequence of restricting tree planting



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opportunities where such change does not occur and within urban renewal sites. We recommend legislative enforceable requirements for minimum tree plantings (eg numbers, sizes, etc).

8. If a new intention is to increase canopy cover then it stands to reason that we cannot accept more lenient legislation that allows developers to remove mature canopy, particularly if it is not replaced. This is the current situation. Add the loss of trees on public land (or the inability to plant) and the situation becomes worse. The points raised above are relevant to a review of the Act in that there needs to be consideration of unleased Territory land and enhanced protection of and value placed upon the street and parkscapes. Without tighter protection of trees on both public and private land the increased canopy cover seems unfeasible.

The pages that following include our responses to the 'questions to get you thinking.'

**AILA welcomes the opportunity to establish a working group with Government to develop solutions to the issues raised above in a collaborative effort with industry.**

We also welcome the opportunity to discuss our submission further and this can be arranged by contacting [act@aila.org.au](mailto:act@aila.org.au).

Sincerely,

**Steve Kirsu**  
AILA ACT Chapter President

12 December 2019



## Responses to 'Questions to get you thinking'

1. *In light of the ACT's new 30% canopy target, do you think we should amend the focus or priority of the Tree Protection Act?*

- Yes.

There should be more legislative enforceable requirements to promote more planting of trees in urban areas. This should include for example:

- Street tree planting to streets with a required percentage of shade cover over pavements
- Minimum requirements for large trees to be planted on multi-unit blocks. Including minimum size requirements for planting areas that have no encroachment by building works (eg. no basements, no service pits) and specify minimum number of large trees to be planted relating to size of block or location.
- Minimum requirements for trees and landscape on all residential blocks. This could be minimum percentage of the block to be soft landscape, minimum percentage of block to be tree canopy
- Minimum shade cover to pavements on all residential and commercial blocks
- All works to be designed and certified by an AILA Registered Landscape Architect

2. *Should the criteria for tree removal at Appendix B be changed?*

- Dimensional criteria for Regulated trees should be amended to avoid multiple-trunked trees which are otherwise insignificant (eg. fruit trees, basal regrowth) but easily reach the cumulative 1.5m trunk circumference.
- The species included as 'Problematic Trees' should be revisited. As an example, the presence of a *Gledistia* on a block of 1200m<sup>2</sup> – approximately twice the area of a Central Canberra suburban block – seems arbitrary. More clarification is required to understand Government motivations behind the inclusion of species on this list.

3. *What criteria, if any, do you think should apply in addition to the current criteria at Appendix B?*

*(For example, providing greater solar access)*

Consideration should be given to the increasing heat island effect and the high environmental priority in addressing this issue through tree planting in a balance manner. For example, large deciduous trees can afford solar access during key winter months while still contributing the urban tree canopy targets.

4. *Should these criteria be more outcomes focused? /*

5. *Would you support more outcome focused criteria in exceptional circumstances?*

- Not necessarily. Strong and practical controls over demonstrating and evaluating the merits and offset of tree removal would be required to avoid excessively subjective



determinations. An outcomes focused approach is needed whereby the assessment is always framed in the wider context of reaching the 30% cover target. A more nuanced, middle road approach can be facilitated through forums such as the Design Review Panel, provided an AILA Registered Landscape Architect is appointed.

*6. Do you support the establishment of a tree fund which would be used to fund more trees being planted in Canberra?*

- Yes, provided the agency responsible for the plantings is suitably resourced to manage and monitor the success of the new plantings during the critical establishment period in the short - medium term.

Yes - If the tree planting locations target where it matters most. Including to:

- address heat sink issues
- provide shade and amenity to urban areas where people also benefit, eg. along paths, at shopping centres, school grounds, multi unit developments, bus stops, carparks
- provide for wildlife
- provide street trees
- provide a monetary return/value to the public realm and adjacent privately held land (see Melbourne CBD Tree Valuation Fact Sheet)
- (there will be many other areas that should be included as target areas)

*7. Would you support the establishment of a no net loss offset scheme? (Whereby when a tree has to be removed, it is replaced by another tree/s or funds are provided into a tree fund).*

- Yes, but if a nett increase in urban tree cover is being pursued, a 'no nett loss' may be ineffectual in meeting the challenges and targets. Offset system should have suitable controls to guarantee success of plantings for the natural life of the trees.

Yes this would give some incentive for developers to value the onsite trees – and they may be more willing to try and keep them rather than remove

*8. Would you support replacement trees planted on  
(a) the same block?*

- Yes, provided suitable controls are applied to the provision of growing conditions for new trees in natural ground, imported soil and over structure.

*(b) public land in the area?*

- Yes, provided it can be demonstrated that the usability and character of the public open space is not diminished (not every public or open space needs more trees) AND that the Territory is sufficiently well resourced to manage the trees into perpetuity.

*(c) any area in Canberra?*

- No. The urban heat island effect is better mitigated by tree canopy concentrated in the urban / suburban areas.

Yes - if suitable target areas can be identified



*9. Would you support more flexible criteria for removing a tree on leased land, if it had to be replaced with new tree/s with no net loss to the urban canopy?*

- Not necessarily. Removal of trees outside the criteria can adequately be assessed through the planning system.

*10. Do you support the establishment of an ACT tree curator? What role could they play in enhancing the canopy on leased land?*

- Not necessarily. We do, however, support the establishment of a Government Landscape Architect who could, in collaboration with the Conservator and expert Panel, guide tree curation.

*11. How could the overall process of applying to manage trees on leased land be improved?*

- Adopt recognised protection controls which are common to trees on Unleased Territory Land for consistency, for example Australian Standard Protection of Trees on Development Sites AS 4970-2009.
- Strengthen scrutiny of whether Utilities owners / installers are complying with relevant processes and approvals
- Require compensatory tree plantings to comply with recognised Standards, for example NATSPEC, to maximise success in the medium term.
- Accountable monitoring of tree management plan implementation

*12. Are there opportunities to reduce regulatory burden on leaseholders whilst maintaining the tree canopy?*

- If the current rules and regulations were followed and enforced this could be reviewed. Clearer outcomes / guidelines identified up front (say for the prospective buyer/developer) could help to reduce the regulatory burden.

*13. Should the removal process be allowed through the planning system?*

- Yes, but with greater clarity on requirements for, and increased scrutiny of, site planning options demonstrating that removal of trees is justified on development grounds. The instances in which a formal submission of options are very rare.

#### **Other remarks**

- Registration of trees prior to release for sale of some urban infill development sites appears in some instances to be based on a target number of trees, rather than a true reflection of the Registration criteria. As a result, the site is encumbered by lower quality, and sometimes structurally unstable, trees.
- Provision by the Conservator of a Risk Register to accompany Registered Trees at time of land sale to Developers seems to be rare or non-existent.
- The interaction between the Tree Protection Act and Heritage Act 2004 requires clarification, to define whether approval must be granted under one, the other, or both Acts.



- Instances where DA / BA exemptions (for example Education projects) are sought should be subject to formal determination of compliance with the Tree Protection Act.
- The 'Penalty Point' system is not known to have been applied.
- A monetary 'bond' assigned to the satisfactory protection and survival of highly significant trees may be worth considering.
- There is lack of clarity on the definition of 'deep soil' planting zones, which is open to interpretation. The term was originally used by Land Development Agency and ACTPLA to describe area/s for large tree planting that has no encroachment by building, however, the lack of written definition allowed this term to be interpreted differently and structures such as basements started to be approved within the zones. It is recommended a new term is introduced and a definition provided to describe area/s for large tree planting that has no encroachment by building or by service pits. Then it should be adopted by ACT planning controls, definition included and used to increase the number of large trees in the urban area.