

**Rebecca Vassarotti MLA**

Minister for the Environment

Minister for Heritage

Minister for Homelessness and Housing Services

Minister for Sustainable Building and Construction

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23/133

Mr Tom Duncan
Clerk
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

By email: Tom.Duncan@parliament.act.gov.au

Dear Mr Duncan

I refer to your letter of 10 November 2022 regarding Petition no. 20-22 and 36-22, tabled by Ms Elizabeth Lee MLA in the Legislative Assembly regarding Appropriate Trees for Bradfield Street, Downer.

The ACT Government notes the concerns raised in the petition in relation to replacement heritage pine trees at this location.

The Monterey Pine trees along Bradfield Street were planted in the early 1940s as a windbreak to protect the former Commonwealth Scientific and Industry Research (CS&IR) Experiment Station. The pine windbreaks are highly visual components of the former Experiment Station, and define its boundary – along Bradfield, Melba, Frencham and Bonython Streets. The pine windbreaks are of heritage significance and were registered on the ACT Heritage Register on 26 June 1998.

The *Heritage Act 2004* (Heritage Act) requires that registered heritage places are conserved and responsibly managed, for current and future generations. In this instance, the conservation of the windbreaks into the future requires the replacement of trees when they reach their end of life, and requires that replacement trees be pines planted in a windbreak formation. As windbreaks are characterised by trees planted in a close, staggered pattern and which grow in a uniform way, sectional removal and replacement of trees is the preferred approach to conserve the historic planting pattern.

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This approach reflects the Heritage Act requirements, and the national principles of heritage conservation specifically the Burra Charter that was first adopted in Australia in 1979.

The Territory Plan also requires the long-term conservation of the heritage trees along Bradfield Street. A Territory Plan Variation for the subject blocks (DV322) was approved in April 2015, and introduced the following into the Downer Precinct Map and Code: *“Maintaining and enhancing the heritage listed trees and other mature trees on the site, and maintaining public access to the heritage listed stand of pine trees along Bradfield and Melba Streets”*.

In this context, the replanting of pine trees along Bradfield Street is a requirement for Stages 1, 2 and 3 of The Bradfield redevelopments.

DA201731204 for Stages 1 and 2 of the now existing residential development was assessed by the independent ACT planning and land authority (ACTPLA) and was conditionally approved. The removal and replacement of heritage trees was part of the publicly notified and approved development in 2017.

Two reviews were lodged with the ACT Civil and Administrative Tribunal (ACAT) by community members challenging the Authority’s approval of DA201731204. After a successful mediation process, ACAT issued Orders approving the development with additional conditions. These additional conditions did not relate to the species or location of the replacement heritage trees.

[DA202138825](#) for the Stage 3 Goodwin Homes development was approved by ACTPLA in 2022, and the removal and replacement of heritage trees was part of the publicly notified and approved development. In addition, a reconsideration application for stage 3 was lodged and the Authority approved this application on 12 January 2023. The Authority’s decision is capable of review before ACAT subject to the relevant legislative processes.

The independent ACT Heritage Council (Council) provided advice on both development applications in support of the removal and replacement of pine trees along Bradfield Street.

As Monterey Pines are now a declared pest species in the ACT, Council advice for both redevelopments supported the use of Canary Island Pine trees for replacement plantings. These trees have similar form to Monterey Pines at maturity, and will conserve the character of the heritage windbreak.

Concerns about solar access impacts were raised with the Council when some residents of the new development identified their concerns in a letter in October 2021 and in a meeting in November 2021.

In November 2021, those residents also made a submission to the Council proposing changes to the planting outcome, such as using deciduous trees or planting a single row of pine trees in the road reserve. This proposal was assessed by the Council in December 2021, and included input from a conifer expert. As a result, the Council did not support these changes as they would diminish the heritage significance of a registered place, which contravenes the Heritage Act.

However, in January 2022, the Council did endorse minor amendments to the replanting outcome, to provide for some improved solar access to the new development whilst conserving the heritage windbreak for future generations. These amendments were:

- Support for pruning of pine trees as they mature, to lift their canopies by up to one third of their height; and,
- Movement of the entire windbreak formation approximately three metres north within the block, closer to the street.

These amendments were agreed to by the Council following their consideration of resident concerns, and reflected their genuine effort to find ways to increase solar access to the new development whilst not compromising the heritage conservation outcome. Trees along Bradfield Street have since been planted in this amended location.

The Territory Plan requires solar access into residential developments, and is therefore a consideration by ACTPLA in assessing development applications. This is, however, balanced with tree preservation, which is a significant part of the assessment of proposed developments. The Territory Plan also has other environmental considerations such as water sensitive urban design, erosions and sediment, bushfire and site coverage controls.

While not applicable at the time of approving DA201731204, the Territory Plan now recognises that solar access into dwellings is not to take into consideration of shading and overshadowing caused by vegetation and trees.

In December 2022, I announced I will be undertaking a comprehensive review of the ACT's heritage arrangements. This review will examine the legislation and how the ACT's approach to the conservation and management of heritage compares to best practice in other states and territories. It will examine the functions of the Council and their role as either a decision maker or advisory body. The outcomes of the review will help to guide and inform a potential reform agenda. I intend to provide further information to the Assembly and the public about what we have learned from this review and the government's future plans in response.

While a review has commenced as to how to best manage and protect heritage values in a growing city, decisions of this kind are a matter for both the independent Council and ACTPLA. They make decisions at arm's length from Ministers and Members of the Legislative Assembly. In doing so, the Council and ACTPLA take great care in ensuring proper consideration and assessment of all matters required under the *Heritage Act 2004* and *Planning and Development Act 2007* and subordinate legislation.

Yours sincerely



Rebecca Vassarotti MLA
Minister for Heritage
16/2/2023