

Urban Tree Canopy Off-set Scheme

This scheme is established by the Minister administering the *Planning, Development and Infrastructure Act 2016* under section 197 of that Act.

Introduction

Section 197 of the *Planning, Development and Infrastructure Act 2016* (the **Act**) allows the Minister administering the Act (the **Minister**) to establish a scheme that is designed to support or facilitate:

- a) development that may be in the public interest or otherwise considered by the designated entity as being appropriate in particular circumstances (including by the provision of facilities at a different site); or
- b) planning or development initiatives that will further the objects of the Act or support the principles that relate to the planning system established by the Act; or
- c) any other initiative or policy—
 - i. designated by the Planning and Design Code; or
 - ii. prescribed by regulations made under the Act.

This scheme is being established by the Minister as a scheme for contributions to be made to a fund to be called the Urban Tree Canopy Off-set Fund (the **fund**).

As provided for under s197(3)(b) of the Act, the scheme includes the ability for provisions specified in the Urban Tree Canopy Overlay within the Planning and Design Code (the **Code**) to be varied as set out in this scheme. Specifically, the scheme provides that where an applicant seeks development approval for a dwelling in a location covered by the Code Urban Tree Canopy Overlay, the applicant may in specified circumstances elect to make a contribution to the fund instead of planting a tree or trees as required under the Deemed-to-Satisfy Criteria or Designated Performance Feature set out in the overlay (depending on the classification of the development).

Urban Tree Canopy Off-set Scheme

1. Citation

This scheme may be cited as the *Urban Tree Canopy Off-set Scheme*.

2. Commencement of operation

This scheme will commence operation on the day on which it is published on the SA planning portal.

3. Object of scheme

This scheme is designed to support the planning initiative reflected in the desired outcome for the Urban Tree Canopy Overlay in the Code so as to promote development that preserves and enhances the urban tree canopy through the planting of new trees and the retention of existing trees by providing that an applicant for development approval may, in appropriate cases, elect to make a contribution to a fund instead of planting the trees required by the overlay, and thus further the objects of the Act in the manner contemplated by section 197(2)(b) of the Act.

4. Interpretation

(1) In this scheme, unless the contrary intention appears:

Act means the *Planning, Development and Infrastructure Act 2016*;

council means a council constituted under the *Local Government Act 1999*;

designated local government area means the whole of a local government area within which the overlay applies (even if the overlay only applies to a portion of that local government area);

designated soil type means the following soil types in accordance with Australian Standard AS2870:

- a) H1-D: Highly reactive clay sites, which may experience high ground movement (41-60 mm) from deep-seated moisture changes; or
- b) H2:D: Highly reactive clay sites, which may experience very high ground movement (61-75 mm) from deep-seated moisture changes; or
- c) E-D: Extremely reactive sites, which may experience extreme ground movement (>75 mm) from deep-seated moisture changes;

DTS/DPF policy means the deemed-to-satisfy criteria and the designated performance feature 1.1, as provided for in the overlay;

fund means the Urban Tree Canopy Off-set Fund established under this scheme;

overlay means the Urban Tree Canopy Overlay in the Code;

scheme means this Urban Tree Canopy Off-set Scheme;

tree size means tree sizes as described in Table 1 of the DTS/DPF policy.

(2) This scheme is to be read and applied in conjunction with:

- a) the requirements of the Act; and
- b) the Code.

- (3) A term used in this scheme that is defined in the Act has the same meaning in this scheme as it has in the Act (unless the contrary intention appears).

5. Establishment of fund

- (1) For the purposes of section 197(3)(a) of the Act, this scheme establishes a fund that consists of:
 - a) all amounts paid to the credit of the fund under clause 6(1); and
 - b) any income paid into the fund under clause 6(3).
- (2) The fund is intended to provide for the planting, establishment and maintenance of trees in the relevant area where it is not practicable or appropriate, in a particular case, to plant the trees that would otherwise be required in order to comply with the DTS/DPF policy.

6. Payments into fund

- (1) Where:
 - a) an applicant seeks planning consent for a dwelling in a location where the overlay applies; and
 - b) the site of the proposed development is located within either:
 - (i) a Housing Diversity Neighbourhood Zone, Urban Renewal Neighbourhood Zone or City Living Zone in the Code; or
 - (ii) an area with a designated soil type; and
 - c) the applicant elects to make a contribution to the fund in lieu of planting a tree (or trees) as provided for by the DTS/DPF policy in the overlay,

then payment must be made to the fund at the rates described from time to time in the *Planning, Development and Infrastructure (Fees) Notice*.

- (2) For the avoidance of doubt, where multiple trees are provided for in the DTS/DPF policy, an applicant may elect to make a contribution to the fund and also plant a tree (or trees), provided that the amount paid to the fund is equivalent to the shortfall in the number of trees provided for in the DTS/DPF policy.
- (3) Any money in the fund that is not for the time being required for the purpose of the fund may be invested by the Minister and any resultant income must be paid into the fund.
- (4) Where an applicant has elected to make a contribution to the fund under this scheme:
 - a) the relevant authority will impose a condition on the relevant development authorisation for planning consent requiring that payment of the amount specified in clause 6(1) must be made into

the fund before the issue of development approval for the subject development application; and

- b) payment must be made through the SA planning portal.

7. Variation of code

For the purposes of section 197(3)(b) of the Act, the overlay will apply as if it provided that a contribution to the fund in accordance with clause 6 of this scheme will be taken to form part of, and to satisfy, the DTS/DPF policy.

8. Payments from fund

Subject to any directions or approvals of the Treasurer made or given after consultation with the Minister under section 197(4)(b) of the Act:

- (1) money standing to the credit of the fund may be distributed by the Minister to a council within a designated local government area; and
- (2) the amount distributed to a council will be the total sum of moneys paid into the fund within the designated local government area for the relevant council in the previous financial year, which payment will be made following:
 - a) the end of the relevant financial year; or
 - b) following an application being made to the Minister by the relevant council, prior to the end of that financial year, at the Minister's discretion; or
- (3) where the Minister considers that the money standing to the credit of the fund is insufficient to warrant distribution to a council within a designated local government area, that money may be, at the Minister's discretion:
 - a) held in the fund across multiple financial years; or
 - b) distributed to the Planning and Development Fund as defined in the Act.

9. Use of money from fund

- (1) Money distributed from the fund may be used for any of the following purposes (and for no other purpose):
 - a) to provide for the planting, establishment and maintenance of trees within reserves or public land anywhere within a designated local government area; or
 - b) the purchase of land within a designated local government area to ensure:
 - (i) the preservation of trees; or

- (ii) that trees can be established in an area with a low urban tree canopy level or a demonstrated urban tree canopy loss.
- (2) Unless otherwise approved by the Minister, in relation to 9(1)(b), money from the fund must not be used:
 - (i) to purchase land at a value which exceeds the market value of the land (determined by the most recent valuation published by the Valuer-General of South Australia as at the date of purchase); or
 - (ii) towards legal costs, transfer fees, stamp duty or compensation arising from the compulsory acquisition of land.

10. Auditing

The fund must be audited in accordance with any requirements under the *Public Finance and Audit Act 1987* and any Treasurer's Instructions issued from time to time under section 41 of that Act.



Hon Nick Champion MP
Minister for Planning

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