

PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

Section 197(6)

Report by the Minister for Planning and Local Government to the Environment,
Resources and Development Committee of Parliament

on the

Urban Tree Canopy Off-set Scheme

Introduction

Section 197 of the *Planning Development and Infrastructure Act 2016* (the Act) provides for the Minister for Planning and Local Government (the Minister) to establish an off-set scheme to, amongst other things, support or facilitate an initiative or policy designated by the Planning and Design Code under the Act.

Section 197(6) of the Act requires that if a scheme is established under section 197, the Minister must:

- Prepare a report that sets out information about the scheme; and
- Furnish a copy of the report to the Environment, Resources and Development Committee of Parliament; and
- Publish a copy of the report on the SA Planning Portal.

Urban Tree Canopy Overlay

The Urban Tree Canopy Off-set Scheme (the Scheme) has been established to support policy in the Urban Tree Canopy Overlay (the Overlay) in the Planning and Design Code. The policy seeks to ensure that development preserves and enhances the urban tree canopy through the planting of new trees and retention of existing mature trees where practicable. The policy provides for the planting of trees where one or more new dwellings are proposed at the rate of one small tree per dwelling site less than 450m², one medium size tree or two small trees per dwelling site between 450-800m² and one large tree, two medium trees or four small trees per dwelling site greater than 800m². The policy also provides for a discount in the number of trees to be planted where existing trees on a site are retained. The Overlay policy has been provided in **Attachment A**.

The Overlay applies in the parts of Metropolitan Adelaide as shown in the provided Urban Tree Canopy Overlay map (**Attachment B**).

Urban Tree Canopy Off-set Scheme

The Scheme establishes the Urban Tree Canopy Off-set Fund (the Fund) and enables a person who is proposing a dwelling within the area that the Overlay applies to elect to make a contribution to the Fund in lieu of planting or retaining the trees required in the Overlay policy. The contribution rates set out in the Scheme are \$300 for a small tree, \$600 for medium tree and \$1,200 for a large tree. These contribution rates will be reviewed over time as necessary, most likely on an annual basis.

The Fund will be used to provide money to councils for the planting of trees in reserves or public land, to purchase land to preserve existing trees or plant trees in areas with a low urban tree canopy or demonstrated urban tree canopy loss. The Fund cannot be used to purchase land above market value or for costs associated with the compulsory acquisition of land.

The Scheme operates independently of any Urban Trees Fund established under section 200(1) of the Act (or section 50B of the *Development Act 1993*), which will continue to operate with respect to payments made in lieu of planting replacement trees when removing a regulated or significant tree (see sections 127(4) and (6) of the Act).

Payments from the Fund to a council will be in accordance with a funding agreement to be established with the relevant council prior payments being made.

The Scheme will be administered by the Planning and Land Use Services Division of the Attorney-General's Department.

The Urban Tree Canopy Off-set Scheme is provided in **Attachment C**.



Hon Vickie Chapman MP
Minister for Planning and Local Government

23 March 2021

Urban Tree Canopy Overlay

Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Residential development preserves and enhances urban tree canopy through the planting of new trees and retention of existing mature trees where practicable.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature																				
<p>PO 1.1</p> <p>Trees are planted or retained to contribute to an urban tree canopy.</p>	<p>DTS/DPF 1.1</p> <p>Tree planting is provided in accordance with the following:</p> <table border="1"> <thead> <tr> <th>Site size per dwelling (m²)</th> <th>Tree size* and number required per dwelling</th> </tr> </thead> <tbody> <tr> <td><450</td> <td>1 small tree</td> </tr> <tr> <td>450-800</td> <td>1 medium tree or 2 small trees</td> </tr> <tr> <td>>800</td> <td>1 large tree or 2 medium trees or 4 small trees</td> </tr> </tbody> </table> <p>*refer Table 1 Tree Size</p> <table border="1"> <thead> <tr> <th colspan="4">Table 1 Tree Size</th> </tr> <tr> <th>Tree size</th> <th>Mature height (minimum)</th> <th>Mature spread (minimum)</th> <th>Soil area around tree within development site (minimum)</th> </tr> </thead> <tbody> <tr> <td>Small</td> <td>4 m</td> <td>2m</td> <td>10m² and min. dimension of 1.5m</td> </tr> </tbody> </table>	Site size per dwelling (m ²)	Tree size* and number required per dwelling	<450	1 small tree	450-800	1 medium tree or 2 small trees	>800	1 large tree or 2 medium trees or 4 small trees	Table 1 Tree Size				Tree size	Mature height (minimum)	Mature spread (minimum)	Soil area around tree within development site (minimum)	Small	4 m	2m	10m ² and min. dimension of 1.5m
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Medium	6 m	4 m	30m ² and min. dimension of 2m
Large	12 m	8m	60m ² and min. dimension of 4m

The discount in Column D of Table 2 discounts the number of trees required to be planted in DTS/DPF 1.1 where existing tree(s) are retained on the subject land that meet the criteria in Columns A, B and C of Table 2, and are not a species identified in Regulation 3F(4)(b) of the Planning Development and Infrastructure (General) Regulations 2017.

Table 2 Tree Discounts

Retained tree height (Column A)	Retained tree spread (Column B)	Retained soil area around tree within development site (Column C)	Discount applied (Column D)
4-6m	2-4m	10m ² and min. dimension of 1.5m	2 small trees (or 1 medium tree)
6-12m	4-8m	30m ² and min. dimension of 3m	2 medium trees (or 4 small trees)
>12m	>8m	60m ² and min. dimension of 6m	2 large trees (or 4 medium trees, or 8 small trees)

Note: In order to satisfy DTS/DPF 1.1, payment may be made in accordance with a relevant off-set scheme established by the Minister under section 197 of the Planning, Development and Infrastructure Act 2016, provided the provisions and requirements of that scheme are satisfied. For the purposes of section 102(4) of the Planning, Development and Infrastructure

	Act 2016, an applicant may elect for any of the matters in DTS/DPF 1.1 to be reserved.
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Procedural Matters (PM) - Referrals

The following table identifies classes of development / activities that require referral in this Overlay and the applicable referral body. It sets out the purpose of the referral as well as the relevant statutory reference from Schedule 9 of the Planning, Development and Infrastructure (General) Regulations 2017.

Class of Development / Activity	Referral Body	Purpose of Referral	Statutory Reference
None	None	None	None



 Urban Tree Canopy
 Local government area
 Roads


Government of South Australia
PLN ID: 5976

Urban Tree Canopy Off-set Scheme

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

Introduction

Section 197 of the *Planning, Development and Infrastructure Act 2016* (the **Act**) allows the Minister for Planning and Local Government (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 date 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 following rates:

Tree Size	Rate (\$ per tree)
Small	\$300
Medium	\$600
Large	\$1,200

- (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.

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 by an auditor determined by the Minister at the end of each financial year and the audited accounts of the fund must be included as part of the annual report for the Act required under the *Public Sector Act 2009*.