



## Agenda Report for Decision

Meeting Date: 18 July 2024

Item Name	Initiation of the Trees and Greening Code Amendment	
Presenters	Rhiannon Hardy and Jason Bailey	
Purpose of Report	Decision	
Item Number	5.2	
Strategic Plan Reference	3 Leading on Planning Policy	
Work Plan Reference	3.1.2 Trees and Greening	
Confidentiality	Not Confidential (Release Delayed). To be released following final decision by the State Planning Commission on initiation of the Trees and Greening Code Amendment. Anticipated by July 2025.	
Conflicts Declared	Nil	
Related Decisions	<ul style="list-style-type: none"><li>• 14 October 2021: Item 4.3: Open Space and Trees Project (Part 1 – Immediate Review of Several Regulatory Matters)</li><li>• 3 February 2022: Item 5.2: Update and advice on interaction with Green Adelaide work</li><li>• 9 June 2022 – Item 5.2: Open Space and Trees Project – Arborist Review and Research Report</li><li>• 13 December 2023 – W2 Code Amendment Collective – Program for 2024</li></ul>	
Conflicts Declared	Nil	
Is the Report author aware of any potential undeclared conflict?		NO

### Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Delayed), with the meeting papers for the item to be released following final decision by the Commission on initiation of the Trees and Greening Code Amendment (the Code Amendment). Anticipated by July 2025.
2. Agree to Initiate the Trees and Greening Code Amendment to the Planning and Design Code (the Code) under section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016* (the Act) subject to any minor amendments first being made, as authorised by the Commission.

3. Authorise the Chair of the Commission to make any minor amendments as required and sign and date the cover page of the Proposal to Initiate in **Attachment 1**.
4. Approve the scope and investigations of the proposed Code Amendment outlined in the Proposal to Initiate (**Attachment 1**).
5. Approve and authorise the Chair of the Commission to make any minor amendments as required and sign the draft letters in **Attachment 2** addressed to the following entities to advise of the initiation:
  - Local Government Association (LGA)
  - All South Australian councils
  - Premier's Climate Change Council (PCCC)
  - Urban Development Institute Australia SA Division (UDIA)
  - Property Council Australia (PCA)
  - Housing Industry Association (HIA)
  - Australian Institute of Architects (AIA)
  - Australian Institute of Landscape Architects (AILA)
  - Department for Environment and Water (DEW)
  - South Australian Housing Trust (Trust)
  - RenewalSA
  - Green Adelaide
  - Conservation Council SA
  - Nature Conservation Society of South Australia (NCS)
  - Greening Australia
  - Treenet.
6. Approve and authorise the Chair of the Commission to make any minor amendments as required and sign the draft letter to the Minister for Planning (the Minister) in **Attachment 3** to advise of the initiation.

## **Background**

### Code and Urban Tree Canopy Off-set Scheme implementation

On 19 March 2021, the Code came into effect for the whole of South Australia, and this included the introduction of tree protection policies, a list of trees declared to be Significant in Part 10 of the Code, and the spatial application of the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay.

On 23 March 2021, the then Minister of Planning and Local Government established the Urban Tree Canopy Off-set Scheme (the Off-set Scheme) and Urban Tree Canopy Off-set Fund (the Off-set Fund) to support policy in the Urban Tree Canopy Overlay. The Urban Tree Canopy Overlay seeks to preserve and enhance the urban tree canopy within residential areas, by retaining existing mature trees where practicable and requiring the planting of new trees, when trees are to be removed. The Off-Set Scheme also provides the opportunity for people to contribute to the Off-set Fund rather than planting new trees.

On 25 March 2021, the Commission issued Practice Direction 16 – Urban Tree Canopy Off-set Scheme 2021 (Practice Direction 16) to support the operation of the Off-set Scheme.

### Open Space and Trees Project

In 2021, the State Planning Commission initiated the Open Space and Trees Project (the Project) to better understand the use and benefits of open space and trees in an urban context, and the impact of infill development on our urban tree canopy.

The Open Space and Trees Project was to be undertaken in three parts:

**Part 1:** Review of regulated tree species and off-set contributions

**Part 2:** Broader review of regulated and significant tree regulations

**Part 3:** Review of urban greening and impact of infill development

At the conclusion of Part 1 and Part 2 of the Project, the Commission advised the Minister that the:

- Size of tree protection triggers is too generous.
- Exemption for trees located within 10 metres of a dwelling or swimming pool is too broad.
- Off-set fees for the removal of regulated or significant trees are inadequate.
- Exempt tree species list should be reviewed.

Part 3 of the Project was initially intended to include a review of the impact of infill development, the operation of the Commission's 'infill tree policy' and the new Off-set Scheme, including tree canopy targets, the fees set under the Scheme and the spatial application of Off-set Scheme. This final part of the Project, however, was superseded by the Minister's request for the Commission to undertake a comprehensive package of tree policy work and implement the recommendations from the planning system review by the Government's Expert Panel.

### Expert Panel

In December 2022 the Minister for Planning (the Minister) wrote to the Expert Panel for the Planning System Implementation Review (the Expert Panel) to request that it provide him with early advice regarding potential changes to the PDI Regulations as they relate to regulated and significant trees, and the associated offset costs and fees.

In January 2023 the Expert Panel recommended to the Minister that tree protections be enhanced through revised tree regulations and an expansion of Code policies pertaining to tree matters. The Expert Panel's recommendations included:

- reducing the prescribed circumference of a regulated and significant tree to protect a broader range of mature trees
- reducing the proximity exemption of ten (10) metres to a dwelling or swimming pool
- limiting pruning of protected trees to 30% and only once in every five (5) years
- Increasing the off-set fees for the removal of regulated and significant trees to better reflect the cost of planting and maintaining replacement trees.

### Tree Regulations

In May 2024, the Government implemented the Commission's recommendations through amendments to the *Planning, Development and Infrastructure (General) Regulations 2017* (the Regulations). The changes made to the Regulations included:

- Reducing the minimum trunk circumference from 2 metres to 1 metre for a regulated tree and 3 metres to 2 metres for a Significant Tree.
- Reducing the exemption for Regulated and Significant Trees, to exclude trees located within 3 metres (previously 10 metres) of an existing dwelling or an existing in-ground swimming pool from the being Regulated or Significant.

- Adding Angophora (any tree of the genus) and Corymbia (any tree of the genus) to the list of species (or genus) of trees that are not excluded from being Regulated or Significant because they are located within 3 metres of an existing dwelling or an existing in-ground swimming pool.

A copy of the *Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024* is contained within **Appendix A**.

On 16 May 2024, the Minister updated the Off-set Scheme to increase the amount that needs to be paid into the Urban Tree Canopy Off-set Fund (the Fund) in lieu of planting and/or retaining the required trees on-site in “designated areas”. The fees have been increased from \$326 to \$1000 for a regulated tree and \$489 to \$1500 for a significant tree. The new fees better reflect the cost of tree replacement and will provide additional funds that can be used by local councils and the Government to plant, establish and maintain trees, or to purchase land to preserve or accommodate the planting of new trees.

On 16 May 2024, the Minister wrote to the Commission (**Appendix B**) to advise of the recent amendments to the Regulations and request that the Commission undertake additional work. The letter requested the Commission progress a Code Amendment to update the policies in the Code to:

- Require consideration of a tree’s contribution to urban canopy in the assessment of a development application seeking to remove a regulated or significant tree.
- Strengthen policy to support design innovation where large trees are retained.
- Investigate an appropriate assessment pathway for trees between 3-10 metres of a dwelling or swimming pool where payment of the relevant off-set fee is made.
- Extend the Urban Tree Canopy Overlay to the Master Planned Neighbourhood Zone (capturing greenfield developments).
- Extend the Regulated and Significant Tree Overlay and the Urban Tree Canopy Overlay to townships outside of metropolitan Adelaide (subject to accurate township boundaries being identified).

The Minister also noted the following additional work for the Commission:

- The preparation of a Practice Guideline for tree assessments to provide consistency and broader consideration of tree value across local councils.
- The provision of a streamlined process or guidance material for councils to include significant trees in the Code.
- Providing support for the South Australian Housing Trust (SAHT) in developing a holistic Tree Planting Strategy and investigate a streamlined assessment pathway in the Code where tree replanting occurs in accordance with that strategy.

Work on a practice guideline for tree assessments and guidance material for the listing of significant trees in the Code (e.g. declaring tree(s) significant which are not classified as significant under the Regulations) will be considered outside of the Code Amendment process, with recommendations provided to the Commission in due course.

It is considered the last point could be covered in the subject Code Amendment to allow investigations to consider providing appropriate mechanisms in the Code in anticipation of a future SAHT Tree Planting Strategy.

## Discussion

A Proposal to Initiate the Code Amendment has been prepared for the Commission's review and approval (**Attachment 1**), responding to the requests for amendments to the Code in the Minister's letter in **Appendix A**.

It is recommended that the Commission initiate the Code Amendment acting on its own initiative under section 73(2)(a) of the Act.

### Scope of the Code Amendment

The Code Amendment will look to review existing tree protection policies in the Code and update Code policies in response to the recent changes to the Regulations, the Commission's Open Space and Trees Project and the recommendations from the Expert Panel's review of the implementation of South Australia's planning system.

The Code Amendment is proposing to:

- Review policies in the Regulated and Significant Tree Overlay guiding the assessment of tree-damaging activity, in order to consider a regulated/significant tree's contribution to urban tree canopy (at present, the Regulated and Significant Tree Overlay does not specifically mention tree canopy).
- As requested by the government, review and update existing Code policies to provide design innovations and incentives that can be used to retain large trees when undertaking new development. For example, investigate whether reduced site areas/setbacks are appropriate for a residential infill development that retains mature trees, in order to achieve appropriate clearance from trees by providing a flexible assessment against policies in other areas. In effect, this flexible policy should incentivise the retention of trees on development sites while still providing for the same development yield.
- As requested by the government, expand the spatial application of the Urban Tree Canopy Overlay to master-planned areas, thereby requiring new tree planting when new houses are built in greenfield areas.
- As requested by the government, provide protection for greater number of large, mature trees by expanding the spatial application of the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay to townships outside of metropolitan Adelaide.
- Investigate opportunities to introduce an appropriate assessment pathway for the removal of trees where the tree is in proximity of an existing dwelling or in-ground swimming pool and payment of the relevant offset fee is made to fund urban greening outcomes.
- Investigate a streamlined assessment pathway for tree-damaging activity where tree replanting will occur in accordance with a Tree Planting Strategy developed by the SAHT.

### Strategic Assessment

The Code must be consistent with the State Planning Policies (SPPs) and should be consistent with the directions of the relevant Regional Plan.

The Code Amendment continues to support the principles of good planning as one of the primary objectives of the Act, in particular 'Biodiversity' and 'Climate Change', as the Code Amendment seeks to maintain and improve our State's biodiversity, by enhancing urban greening and tree canopy in Greater Adelaide and regional townships.

The Amendment seeks to implement the following key SPPs:

- **SPP 4: Biodiversity:** To maintain and improve our state's biodiversity and its life supporting functions.
- **SPP 5: Climate Change:** Provide for development that is climate ready so that our economy, communities and environment will be resilient to climate change impacts.

Applying the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay to a greater number of trees in more areas throughout the State will help to maintain and improve our State's biodiversity. This change also means the Urban Tree Canopy Off-set Scheme and relevant Urban Trees Fund will apply to more areas and increase the financial contributions made help to facilitate the planting of more trees in public places, including streetscapes, watercourses, linear parks and open space.

The achievements of other SPPs and relevant policies and targets within the Regional Plan are further outlined in the Proposal to Initiate (**Attachment 1**).

#### Engagement and investigations already undertaken

The scope of the Code Amendment has been guided by the investigations that were undertaken to inform the recent changes to the Regulations and the Open Space and Trees Project, which was initiated by the Commission in response to University of Adelaide research, and recommendations from the Expert Panel's review into the implementation of South Australia's planning system.

The investigations sought to better understand the use and benefits of open space and trees in an urban context, the impact of infill development on our urban tree canopy and included a review of urban greening policies in the Code including a review of regulated and significant tree measures.

This information provided a greater understanding of the benefit of protecting large trees and preserving and enhancing the tree canopy within urban areas. The investigations included an analysis of existing tree protection policies and provided a comparison of tree policies in other states. The arborist report was undertaken in consultation Green Adelaide, the Department for Environment and Water, and the State Herbarium and Botanic Gardens and was to provide a detailed analysis of the existing tree species that are exempted from the regulated and significant tree policies.

The investigations undertaken so far were used to support the recent changes to the Regulations, updates to the Off-set Scheme, changes to Practice Direction 16 – Urban Tree Canopy Off-set Scheme 2021, and to inform the scope of this Code Amendment.

#### Further engagement

An Engagement Plan will be prepared that sets out how, who and when the Commission will engage on the Code Amendment in accordance with the Community Engagement Charter. The Engagement Plan will be presented to the Commission for approval prior to the commencement of public consultation.

#### Next steps

- Undertake the investigations identified in the Proposal to Initiate to inform the preparation of the Code Amendment. This includes procurement of arboricultural/architectural expertise to identify policy incentives and design innovations to allow for larger, mature trees to be retained.
- Finalise the Code Amendment and Engagement Plan for approval by the Commission for public consultation release.
- Undertake the consultation process in accordance with the Engagement Plan.
- Review the submissions received.
- Prepare an Engagement Report in accordance with section 73 of the Act.
- Present the Engagement Report and the Code Amendment to the Commission for approval.
- Present the Code Amendment and Engagement Report to the Minister for adoption.

**Attachments:**

1. Proposal to Initiate the Trees and Greening Code Amendment (#21700653)
2. Suggested letter to stakeholders (#21710503)
3. Suggested letter to the Minister for Planning (#21710488)

**Appendices:**

- A. Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024 (#21700513)
- B. Letter from the Minister of Planning to the Chair of the State Planning Commission (#21700467)

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Endorsed by: Jason Bailey and Marc Voortman

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Date: 12 July 2024

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OFFICIAL

# PROPOSAL TO INITIATE AN AMENDMENT TO THE PLANNING & DESIGN CODE

## Tree Protection and Planting Code Amendment By the State Planning Commission (the Designated Entity)

### Contact details

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(Signature)

CHAIR, STATE PLANNING COMMISSION

Date: 13/08/2024

This Proposal to Initiate document forms the basis for the preparation of a proposed amendment to the Planning and Design Code for the purpose of section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016*.

## Contents

<b>1. INTRODUCTION</b> .....	2
1.1. Designated Entity for Undertaking the Code Amendment.....	2
1.2. Background.....	2
1.3. Rationale for the Code Amendment.....	7
<b>2. SCOPE OF THE CODE AMENDMENT</b> .....	8
2.1. Affected Area .....	8
2.2. Scope of Proposed Code Amendment .....	8
<b>3. STRATEGIC PLANNING OUTCOMES</b> .....	11
3.1. Summary of Strategic Planning Outcomes .....	11
3.2. Alignment with State Planning Policies.....	11
3.3. Alignment with Regional Plans .....	12
3.4. Alignment with Other Relevant Documents .....	13
<b>4. INVESTIGATIONS AND ENGAGEMENT</b> .....	14
4.1. Investigations Already Undertaken.....	14
4.2. Further Investigations Proposed.....	16
4.3. Engagement Already Undertaken .....	16
4.4. Further Engagement Proposed .....	17
<b>5. CODE AMENDMENT PROCESS</b> .....	17
5.1. Engagement Plan.....	17
5.2. Engagement Report.....	18
<b>ATTACHMENT A</b> .....	19
<b>Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024</b> .....	19

## 1. INTRODUCTION

The State Planning Commission (the Commission) is an independent body providing advice and leadership on all aspects of planning and development in South Australia. A key role of the Commission is to ensure the Planning and Design Code (the Code) is maintained, reflects contemporary values relevant to planning and is responsive to emerging trends and issues.

The Commission is proposing to initiate an amendment to the Code as it relates to the whole of South Australia, excluding coastal waters (the Affected Area).

**The Tree Protection and Planting Code Amendment seeks to preserve and enhance South Australia's tree canopy by updating tree protection policies, promoting design innovation to retain large trees, reviewing assessment pathways and policies for tree removal in certain cases, and extending both the Regulated and Significant Tree Overlay and the Urban Tree Canopy Overlay to cover more parts of South Australia.**

The Commission seeks to amend the Code pursuant to section 73(2)(a) of the Planning, Development and Infrastructure Act 2016 (the Act). This 'Proposal to Initiate' details the scope, relevant strategic and policy considerations, nature of investigations to be carried out and information to be collected for the Tree Protection and Planting Code Amendment (the Code Amendment). It also details the timeframes to be followed in undertaking the Code Amendment.

The Commission is the 'designated entity' responsible for conducting this Code Amendment process and is required to undertake consultation in accordance with the [Community Engagement Charter](#) and make final recommendations to the Minister for Planning (the Minister) prior to consideration whether to adopt, alter or refuse the Code Amendment.

### 1.1. Designated Entity for Undertaking the Code Amendment

In accordance with section 73(2)(a) of the Act, the Commission will be the Designated Entity responsible for undertaking the Code Amendment process. As a result:

- 1.1.1. The Commission acknowledges that it will be responsible for undertaking the Code Amendment in accordance with the requirements Act.
- 1.1.2. The Commission intends to undertake the Code Amendment by utilising professional expertise of employees of the Planning and Land Use Services (PLUS) division of the Department for Housing and Urban Development including:
  - Planning officers
  - Communications staff
  - Staff responsible for the technical management and operation of the online Code.

### 1.2. Background

On 19 March 2021, the Code came into effect for the whole of South Australia. As part of this process, existing regulated and significant tree policies were transitioned

from council development plans into the Code. This included the creation of the Regulated and Significant Tree Overlay, as well as Part 10 of the Code to define those trees or stands of trees, pursuant to Section 68 of the Act, that were previously declared to be significant by council development plans.

The Urban Tree Canopy Overlay was also introduced in the Code to ensure residential development preserves and enhances urban tree canopy through the planting of new trees and retention of existing mature trees. The policies in the Urban Tree Canopy Overlay complemented the target in *The 30-Year Plan for Greater Adelaide* (2017 Update) to increase urban green cover across Greater Adelaide by 20%. The overlay policies seek to retain existing large, mature trees where practicable and includes a requirement for new trees to be planted when new dwellings are built.

#### Urban Tree Canopy Off-set Scheme & Urban Tree Canopy Off-set Fund

On 23 March 2021, the then Minister of Planning and Local Government established the Urban Tree Canopy Off-set Scheme (the Off-set Scheme) to support policies in the Urban Tree Canopy Overlay.

The Off-set Scheme introduced the Urban Tree Canopy Off-set Fund (the Off-set Fund), to provide the opportunity to make a financial contribution to the Off-set Fund in circumstances where it would be impractical to plant new trees in accordance with the Urban Tree Canopy Overlay policy (e.g. when soil types are prohibitive).

The Off-set Fund provides for the planting of trees in reserves or public land, the purchase of land to preserve existing trees, or the planting of trees in areas with a low urban tree canopy or demonstrated urban tree canopy loss.

On 25 March 2021, the Commission issued Practice Direction 16 – Urban Tree Canopy Off-set Scheme 2021 (Practice Direction 16) to support the operation of the Off-set Scheme by specifying the certain procedural matters, which are required for the effective operation of the Urban Tree Canopy Off-set Scheme.

#### Open Space and Trees Project

In 2021, the State Planning Commission initiated the Open Space and Trees Project (the Project) to better understand the use and benefits of open space and trees in an urban context, and the impact of infill development on our urban tree canopy. The Project aimed to provide the Commission with a suitable evidence base that could be used to inform a planning policy review in relation to open space and trees in urban contexts. The issues and opportunities to be considered within the Project included:

- the impact of climate change and the ‘urban heat effect’
- open space and urban greening policy and its contemporary relevance
- loss of urban trees as a result of infill development
- the potential imbalance between the value of regulated and significant trees, and the penalties which apply for their removal
- inappropriate tree species included (or excluded) as regulated and significant trees.

The Project was initially to be undertaken in three parts:

### **Part 1: Review of regulated tree species and off-set contributions**

Objective: Review trees that are exempt from regulated tree controls and quantify an appropriate off-set contribution for the removal of regulated and significant trees.

In 2021, a desktop review of the regulatory tree controls was undertaken by Planning and Land Use Services (PLUS). An arborist report that included a detailed analysis of the existing tree species exemptions was also completed in April 2022. The report was undertaken in consultation with Green Adelaide, the Department for Environment and Water, and the State Herbarium and Botanic Gardens. A copy of the Open Space and Trees Project - Arborist Review can be downloaded from:

[https://dit.sa.gov.au/data/assets/pdf\\_file/0010/1087885/Open\\_Space\\_and\\_Trees\\_Project\\_-\\_Arborist\\_Review.pdf](https://dit.sa.gov.au/data/assets/pdf_file/0010/1087885/Open_Space_and_Trees_Project_-_Arborist_Review.pdf)

### **Part 2: Broader review of regulated and significant tree regulations**

Objective: Undertake a comprehensive review of regulated and significant tree regulations and legislative measures.

In 2022, a broader review of Regulated and Significant tree regulations occurred. In addition to this, a separate research report was undertaken by the Environmental Institute of the University of Adelaide, in May 2022. The report provided data and analysis of South Australia's tree protections, compared to other Australian states and territories, including the size of trees protected and the various exemptions which currently apply. A copy of the Urban Tree Protection in Australia Report can be downloaded from:

[https://dit.sa.gov.au/data/assets/pdf\\_file/0011/1087886/Urban\\_tree\\_protection\\_in\\_Australia.pdf](https://dit.sa.gov.au/data/assets/pdf_file/0011/1087886/Urban_tree_protection_in_Australia.pdf)

At the conclusion of Part 1 and Part 2 of the Project, the Commission advised the Minister that:

- the size of tree protection triggers is too generous
- the exemption for trees located within 10 metres of a dwelling or swimming pool is too broad
- the offset fees for the removal of regulated or significant trees are inadequate
- the exempt tree species list should be reviewed

### **Part 3: Review of urban greening and impact of infill development**

The final part of the Project was initially intended to include a review of the impact of infill development and the operation of the Commission's 'infill tree policy', including a review of the fees set under the Off-set Scheme and the spatial application of the Off-set Scheme. The Commission also planned to review tree canopy targets based on the investigations being undertaken to support the preparation of the new 30-Year Plan for Greater Adelaide.

Part 3 of the Project is represented through recent changes to the Regulations, the subject Code Amendment, work on the Greater Adelaide Regional Plan, and recommendations from the Expert Panel.

More information regarding the Commission's Open Space and Trees Project can be downloaded from:

[https://www.saplanningcommission.sa.gov.au/projects\\_and\\_engagement/commission\\_on\\_projects#Open\\_Space\\_and\\_Trees\\_Project](https://www.saplanningcommission.sa.gov.au/projects_and_engagement/commission_on_projects#Open_Space_and_Trees_Project)

### Expert Panel

In December 2022, the Minister for Planning (the Minister) wrote to the Expert Panel for the Planning System Implementation Review (the Expert Panel) requesting it provide him with early advice regarding potential changes to the *Planning, Development and Infrastructure (General) Regulations 2017* (the Regulations), as they relate to Regulated and Significant trees, including the associated off-set costs and fees.

In January 2023, the Expert Panel advised that tree protections be enhanced through revised tree regulations and an expansion of Code policies pertaining to tree matters and, in doing so, provided the following early recommendations to the Minister:

#### **1. Circumference**

Recommendation: The prescribed circumference of a regulated and significant tree be reduced with the intent of offering protection to a broader range of mature trees.

#### **2. Canopy**

Recommendation: The Government investigate the use of tree canopy as a measure of tree protection.

#### **3. Proximity Exemptions**

Recommendation: The existing proximity exemption of ten (10) metres to a dwelling or swimming pool be significantly reduced.

#### **4. Pruning**

Recommendation: Pruning of protected trees only be permitted to occur at a rate of 30% once in every five (5) years.

#### **5. Species**

Recommendation: The Government investigate and re-consider the need for the inclusion of an exempt species list in the Regulations.

#### **6. Off-set Fees**

Recommendation: The off-set fees for the removal of regulated and significant trees are significantly increased, with that increase acknowledging the cost to local government of planting and maintaining replacement trees.

#### **7. Interim Measures**

Recommendation: The Government consider whether there are any interim measures able to be implemented to prevent a rush on tree removals.

The Expert Panel's Final Report and Recommendations also included the following relevant recommendations regarding the Code's tree policies:

- The Planning and Design Code policy should support design innovation to enable the retention of trees.
- Extend the application of the Urban Tree Canopy Overlay to all new allotments in the Master Planned Neighbourhood Zone.
- Extend the Urban Tree Canopy Overlay and the Regulated and Significant Tree Overlay to townships and address any anomalies in current township mapping for this purpose.

A copy of the Expert Panel's Final Report and Recommendations 2023 can be downloaded from:

[https://plan.sa.gov.au/planning\\_review/about\\_the\\_review/final-report-and-government-response](https://plan.sa.gov.au/planning_review/about_the_review/final-report-and-government-response).

Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024

In May 2024, the Government implemented amendments to the Regulations, including:

- a) The following amendments to what constitutes a regulated tree or significant tree:

A regulated tree has:

- a single trunk with a circumference of 1 metre or more (previously 2 metres or more) - when measured at a point 1 metre above natural ground level
- multiple trunks with a total circumference of 1 metre or more (previously 2 metres or more) and an average circumference of 310 millimetres or more (previously 625 millimetres or more) – when measured at 1 metre above natural ground level.

A significant tree has:

- a single trunk with a circumference of 2 metres or more (previously 3 metres or more) - when measured at a point 1 metre above natural ground level
- multiple trunks with a total circumference of 2 metres or more (previously 3 metres or more) and an average circumference of 625 millimetres or more – when measured 1 metre above natural ground level.

- b) Amendments to ensure the criteria for what constitutes a regulated or significant tree do not apply to a tree located within 3 metres (previously 10 metres) of an existing dwelling or an existing in-ground swimming pool, other than a tree within one of the listed species (or genus) of trees, while adding Angophora (any tree of the genus) and Corymbia (any tree of the genus) to the listed species.

- c) Amendments to refer to a tree of a species designated (from time to time) by the Minister by notice published on the SA planning portal, rather than listing the specific species of trees in the Regulations.
- d) Amendments to the definition of tree damaging activity to restrict the pruning of trees where pruning has been undertaken less than 5 years prior.
- e) Prescribe additional criteria for the purposes of declaring significant trees within the Code, to include the following:

**18A—Planning and Design Code—significant trees**

*For the purposes of section 68(1)(a)(iv) and (b)(iv) of the Act, a prescribed criterion is that the significant tree or stand of trees (as the case requires) makes a significant contribution to the urban tree canopy of the local area.*

A copy of the *Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024*, is contained within **Attachment A**.

On 16 May 2024, the Minister for Planning updated the Off-set Scheme to increase the amount that needs to be paid into the Urban Tree Canopy Off-set Fund (the Fund) in lieu of planting and/or retaining trees in “designated areas”. The fees have been increased from \$326 to \$1000 for a Regulated Tree and \$489 to \$1500 for a Significant Tree. The new fees better reflect the cost of tree replacement and can be used by local councils and the Government to plant, establish and maintain trees, or to purchase land to preserve or accommodate the planting of new trees.

The Code Amendment will support the recent amendments to the Regulations by ensuring the policies guiding the assessment of tree damaging activity reflect the broader criterion for regulated and significant trees and promote the preservation and enhancement of the existing urban tree canopy.

The investigations undertaken as part of the Code Amendment will be used to inform the preparation of new and updated tree protection policies and to determine the parts of the State where the overlays should be applied.

### **1.3. Rationale for the Code Amendment**

Natural resources and the environment improve the quality of life within our communities and underpin South Australia’s economic prosperity and social wellbeing. Green infrastructure contributes to air and water filtration, reducing the urban heat effect, improving hazard resilience, enhancing biodiversity and helping to provide economic, cultural, spiritual and recreational benefit.

Green infrastructure also contributes to climate regulation and helps to respond to the impacts of climate change by removing carbon dioxide from the air, storing carbon in the trees and soil, and releasing oxygen into the atmosphere.

The planning system has a key role to play in management of our natural resources and the environment. The protection and enhancement of green infrastructure when undertaking development will improve our natural environment and help people

remain connected to our green infrastructure networks, which are important for our health, happiness and wellbeing.

The Regulation changes discussed above reduced the exemption distance for regulated and significant trees, to only allow for tree damaging activity (including the removal of trees) to occur within three metres of a home or pool without approval. In addition to this, the pruning of regulated and significant trees will be limited to allow for only 30 percent of the tree's canopy to be removed every five years. The Off-set Fund contribution for destroying or removing regulated or significant trees was also increased to better reflecting the cost of tree replacement.

The Code Amendment will seek to align the Code with the recent Regulation changes to help preserve and enhance the urban tree canopy, with appropriate criteria to assess tree-damaging activity in relation to regulated and significant trees.

The Code Amendment will review existing Code policies and explore opportunities for new policy initiatives to support tree retention and planting. Specifically, policy will be explored to promote design innovation that enables the retention of trees, acknowledging dual priorities for tree retention balanced with housing supply and development.

The Code Amendment will investigate appropriate assessment pathways and policy for tree-damaging activity in limited circumstances, including where trees are located in proximity of existing dwellings and in-ground swimming pools.

It's noted regulated/significant tree controls (represented through the Regulated and Significant Tree Overlay) currently apply to metropolitan Adelaide, as well as parts of the Adelaide Hills and Mount Barker (with some exceptions). The Urban Tree Canopy Overlay (requiring tree planting/retention with new houses) currently only applies to zones in metropolitan Adelaide which anticipate residential development. The Code Amendment will investigate opportunities to expand the spatial application of these overlays to townships in Greater Adelaide, and the Urban Tree Canopy Overlay to master planned areas.

## **2. SCOPE OF THE CODE AMENDMENT**

### **2.1. Affected Area**

The proposal seeks to amend the Code for the whole of South Australia.

### **2.2. Scope of Proposed Code Amendment**

The Code Amendment will include a review of the existing tree protection policies in the Code and seeks to update policies based on the recent changes to the Regulations, the Commission's Open Space and Trees Project and the recommendations resulting from the Expert Panel's review into the implementation of South Australia's planning system. This will include incentives to retain trees and the analysis of assessment pathways.

The Code Amendment will include a review of the spatial application of the following overlays:

- Regulated and Significant Tree Overlay
- Urban Tree Canopy Overlay

The Code Amendment will review the existing overlays and consider spatially applying the Regulated and Significant Overlay to townships in Greater Adelaide, while extending the Urban Tree Canopy Overlay to both Master Planned Neighbourhood Zones and townships in Greater Adelaide.

While the recommendations of the Expert Panel regarding overlay expansion to townships did not limit this geography to Greater Adelaide, it is considered appropriate to investigate extending these tree protection/planting regimes to townships within Greater Adelaide initially<sup>1</sup>, acknowledging the investigations required to determine what constitutes a ‘township’ and interactions with the *Native Vegetation Act 1991*.

The Code Amendment will explore opportunities to improve assessment pathways. This may include review of how tree-damaging activity is assessed where trees are in proximity of dwellings and in-ground swimming pools (and offset fees are paid to fund greening outcomes in more appropriate locations). It may also include where tree removal is required to support housing projects by the South Australian Housing Trust (the SAHT), where a Tree Planting Strategy has been approved and the replanting of trees will occur in accordance with the strategy.

While not necessarily covered by this Code Amendment, it’s noted that the State Planning Commission is also investigating developing a Practice Guideline for tree assessments to provide consistency and broader consideration of tree value across local councils.

<p><b>Current Policy</b></p>	<p>OVERLAYS</p> <ul style="list-style-type: none"> <li>• Regulated and Significant Tree Overlay</li> <li>• Urban Tree Canopy Overlay</li> </ul> <p>GENERAL DEVELOPMENT POLICIES</p> <ul style="list-style-type: none"> <li>• Design in Urban Areas</li> </ul>
<p><b>Amendment Outline</b></p>	<p>The Code Amendment contemplates amendments to:</p> <ul style="list-style-type: none"> <li>• the spatial application of the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay</li> </ul>

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<sup>1</sup> It’s noted that any councils outside of Greater Adelaide could apply to spatially apply the Regulated and Significant Tree Overlay and / or the Urban Tree Canopy Overlay to their townships, or to declare a particular tree or stand of trees to be significant under section 68 of the Act, through a separate Code Amendment.

	<ul style="list-style-type: none"> <li>• policies in the Regulated and Significant Tree Overlay to consider tree canopy when assessing tree-damaging activity, and policy applying to tree-damaging activity in proximity of dwellings and in-ground swimming pools</li> <li>• Development Classification/Assessment Tables/ Procedural Matters in zones relating to tree-damaging activity</li> <li>• Design and incentive policies as they relate to the retention of trees.</li> </ul>
<p><b>Intended Policy</b></p>	<p>Subject to investigations, the Code Amendment is anticipated to propose the following policy and spatial amendments, in response to requests from the government:</p> <ul style="list-style-type: none"> <li>• Review policies in the Regulated and Significant Tree Overlay guiding the assessment of tree-damaging activity, in order to consider a regulated/significant tree’s contribution to urban tree canopy (at present, this Overlay does not specifically mention tree canopy).</li> <li>• Review and update existing Code policies to provide design innovations and incentives that can be used to retain large trees when undertaking new development. For example, investigate whether reduced site areas/setbacks are appropriate for a residential infill development that retains mature trees, in order to achieve appropriate clearance from trees by providing a flexible assessment against policies in other areas. In effect, this flexible policy should incentivise the retention of trees on development sites while still providing for the same development yield.</li> <li>• Require tree planting/retention when new houses are built in greenfield areas by expanding the spatial application of the Urban Tree Canopy Overlay to master-planned areas.</li> <li>• Provide protection for greater number of large, mature trees, and require tree planting/retention with new homes, by expanding the spatial application of the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay to townships in Greater Adelaide.</li> <li>• Investigate the appropriate assessment pathway/policies for the removal of a regulated/significant tree in proximity of an existing dwelling or in-ground swimming pool.</li> </ul>

	<ul style="list-style-type: none"> <li>Investigate a streamlined assessment pathway for tree-damaging activity where tree replanting will occur in accordance with a Tree Planting Strategy developed by the SAHT.</li> </ul>
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### 3. STRATEGIC PLANNING OUTCOMES

Proposed Code Amendments occur within a state, regional and local strategic setting, which includes:

- State Planning Policies (SPPs)
- Regional Plans
- Other relevant strategic documents.

#### 3.1. Summary of Strategic Planning Outcomes

This Code Amendment seeks to support recent changes to the Regulations and the recommendations from the planning system review by the Government’s Expert Panel to help support and create cooler and more liveable neighbourhoods, retain the open garden character of established suburbs, contribute to greener streetscapes, and assist with achieving tree canopy targets.

#### 3.2. Alignment with State Planning Policies

The SPPs set out the State’s overarching goals and requirements for the planning system. Under section 66(3)(f) of the Act, the Code must comply with any principle prescribed by a SPP.

The Code Amendment should be initiated because the strategic planning outcomes sought to be achieved through the Code Amendment align with or seek to implement the following SPPs:

State Planning Policy (SPP)	Code Amendment Alignment with SPPs
<p><b>SPP 4: Biodiversity</b></p> <p><b>Objective:</b> To maintain and improve our state’s biodiversity and its life supporting functions.</p> <p><b>SPP 4.4:</b> Enhance the biodiversity of urban areas and townships through a connected and diverse network of green infrastructure systems along streetscapes, major watercourses, linear parks, open space, the coast and other strategic locations.</p>	<p>The Code Amendment will seek to retain a greater number of large, mature trees in more areas throughout the state.</p> <p>Expansion of the Urban Tree Canopy Overlay to master-planned areas will broaden tree planting requirements throughout the state.</p> <p>Expansion of both the Regulated and Significant Tree Overlay and the Urban Tree Canopy Overlay to townships in Greater Adelaide will provide for the retention of mature trees, and the requirement for more tree plantings.</p>

<p><b>SPP 4.5:</b> Where impacts to biodiversity cannot be avoided, these impacts should be minimised and where possible, offset.</p>	<p>In addition to more tree planting/retention, utilisation of a tree off-set scheme will help to maintain and improve our state’s biodiversity by providing funding that can be used to plant additional trees and enhance the biodiversity of urban areas and townships including streetscapes, watercourses, linear parks and open space.</p>
<p><b>SPP 5: Climate Change</b></p> <p><b>Objective:</b> Provide for development that is climate ready so that our economy, communities and environment will be resilient to climate change impacts.</p> <p><b>SPP 5.11:</b> Regional Plans should include performance targets for urban greening and tree canopy enhancement in Greater Adelaide and regional townships.</p>	<p>The retention and protection of regulated and significant trees and the preservation and enhancement of the Urban Tree Canopy Overlay will help to create communities that are more resilient to climate change by supporting and creating cooler and more liveable neighbourhoods and contributing to greener streetscapes.</p> <p>The Code Amendment, in combination with the changes to the Regulations, will protect more large, mature trees and help to preserve and enhance the tree canopy within Greater Adelaide and in master-planned areas statewide.</p>

### 3.3. Alignment with Regional Plans

As with the SPPs, the directions set out in Regional Plans provide the long-term vision as well as setting the spatial patterns for future development in a region. This includes consideration of land use integration, transport infrastructure and the public realm.

As a State-wide Code Amendment, all Regional Plans (identified as volumes of the South Australian Planning Strategy prepared under the *Development Act 1993*, and applicable until such time as the new Regional Plans are prepared and adopted under the Act) are relevant for consideration as part of this Code Amendment:

- The 30-Year Plan for Greater Adelaide (2017 Update) + The 30-Year Plan for Greater Adelaide - 2017 Update, Implementation Plan 2017/2018
- The Eyre and Western Region Plan (April 2012)
- Far North Region Plan (July 2010)
- Kangaroo Island Plan (January 2011) + addendum Kangaroo Island Sustainable Futures (January 2014)
- Limestone Coast Region Plan (May 2011)
- Mid North Region Plan (May 2011)
- Murray and Mallee Region Plan (January 2011) + addendum special character of the Barossa Valley and McLaren Vale (December 2013)
- Yorke Peninsula Regional Land Use Framework (December 2007)

- Port Augusta Structure Plan (July 2010)
- Greater Mount Gambier Master Plan (February 2008)
- Andamooka Structure Plan (July 2013).

The Regional Plans include priorities and targets, which are relevant for this Code Amendment and relate to:

- The protection and retention of trees.
- Protecting and re-establishing biodiversity.
- The need for green liveable cities
- Increasing urban green cover / tree canopy and re-establish green corridors.
- Ensuring that urban infill areas maintain appropriate levels of urban greenery.
- Importance of greening streets and urban environments
- Mitigation of the urban heat island effect by growing the urban tree canopy
- Responding to the impacts of climate change and support the implementation of the SA Climate Change Strategy 2015-2050.

The key goals and strategies contained in Regional Plans relate broadly to climate change, protection of enhancement of biodiversity and the need to retain and expand the urban tree canopy to contribute to the cooling of our cities and help mitigate the urban heat island effect. These strategies will be given appropriate consideration in the preparation of this Code Amendment.

The Code Amendment will apply tree protection and planting policies to a larger portion of the state. The proposed changes will help to protect and preserve a greater number of large, mature trees, require new trees to be planted when residential development is undertaken and increase the amount of funds that could potentially be raised through an off-set scheme to fund greening outcomes.

Updating the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay to areas outside of metropolitan Adelaide will not only help to protect more trees but also extend the tree planting policies and the current Urban Tree Canopy Off-set Scheme to more parts of the state.

### **3.4. Alignment with Other Relevant Documents**

Additional documents relate to the broader land use intent within the scope of this proposed Code Amendment and therefore are identified for consideration in the preparation of the Code Amendment.

The following table identifies other documents relevant to the proposed Code Amendment:

Other Relevant Document	Code Amendment Alignment with Other Relevant Document
<p><a href="#"><u>South Australian Government's Climate Change Actions</u></a></p>	<p>The South Australian Government's Climate Change Actions (2022) provide a range of foundational actions to respond to climate change.</p> <p>The retention of trees and the preservation and enhancement of the urban tree canopy aligns with delivering the following actions in Part 5 – Built and Urban Environments:</p> <p><b>Action 5.1</b> – <i>Strengthen climate smart planning, building and design policies and their implementation in the planning system.</i></p> <p><b>Action 5.8</b> – <i>Identify strategic opportunities for urban greening in metropolitan Adelaide.</i></p> <p><b>Action 5.9</b> – <i>Develop improved policies, tools and guidance for the new planning system to achieve greener and cooler neighbourhoods.</i></p> <p><b>Action 5.10</b> – <i>Increase implementation of green infrastructure through capacity building and incentives.</i></p>
<p><a href="#"><u>Draft Urban Greening Strategy (Green Adelaide)</u></a></p>	<p>It's noted that the Draft Urban Greening Strategy was released for public consultation in April 2024, and seeks to promote the greening of metropolitan Adelaide through:</p> <ul style="list-style-type: none"> <li>• Increased tree canopy cover</li> <li>• Greater tree species diversity</li> <li>• Reduced urban heat intensity.</li> </ul> <p>The Code Amendment will promote these aims by seeking innovative ways to maximise tree canopy in urban infill development.</p>

## 4. INVESTIGATIONS AND ENGAGEMENT

### 4.1. Investigations Already Undertaken

Preliminary investigations have already been undertaken as part of the recent changes to the Regulations and the 'Open Space and Trees Project', which was initiated by the Commission in response to University of Adelaide research, and the Expert Panel's review into the implementation of South Australia's planning system. The project sought to better understand the use and benefits of open space and trees in an urban context, the impact of infill development on our urban tree canopy and

included a review of urban greening policies in the Code including a review of regulated and significant tree measures.

The investigations undertaken so far were used to support the recent changes to the Regulations, updates to the Urban Tree Canopy Off-set Scheme, and to inform the Scope of this Code Amendment. The investigations undertaken so far included a review of:

- Existing tree protection policies and overlays in the Code.
- The Expert Panel's independent review of the *Planning, Development and Infrastructure Act 2016* and the Planning and Design Code, including the [final report and government response](#).
- The Commission's [Preserving our Green Infrastructure Policies in the Planning and Design Code](#) brochure, which provides an overview of the policies in the Code and related legislation concerning the environment and preservation of our green infrastructure.
- Information brochures and factsheets that were prepared to support the recent changes to the Regulations.
- [Urban Tree Protection in Australia](#) report undertaken by the University of Adelaide, for the South Australian Attorney-General's Department Planning and Land Use Services (PLUS) Division, to review regulatory matters related to the protection of trees.
- [Open Space and Trees Project - Part 1A \(Arborist Review\) report](#), which was prepared by Dr Dean Nicolle in 2022 for the Attorney General's Department, PLUS Division, Government of South Australia.
- Minister for Planning and Local Government 2021 report to the Environment Resources and Development Committee of Parliament on the Urban Tree Canopy Off-set Scheme
- [Phase Three \(Urban Areas\) Planning and Design Code Amendment Engagement Report 2021](#)
- [State Planning Policies for South Australia 2019](#) and [30-Year Plan for Greater Adelaide 2017 Update](#).

This information provides a greater understanding of the benefit of protecting large trees and preserving and enhancing the tree canopy within urban areas. The information provides an analysis of existing tree protection policies and provides a comparison with tree policies in other states.

The Arborist Review report was undertaken in consultation Green Adelaide, the Department for Environment and Water, and the State Herbarium and Botanic Gardens and was to provide a detailed analysis of the existing tree species that are exempted from the regulated and significant tree policies.

More information regarding regulated and significant trees can be found here:

[https://plan.sa.gov.au/our\\_planning\\_system/programs\\_and\\_initiatives/significant\\_and\\_regulated\\_trees](https://plan.sa.gov.au/our_planning_system/programs_and_initiatives/significant_and_regulated_trees)

## 4.2. Further Investigations Proposed

In addition to the investigations already undertaken and identified above, the table below outlines what additional investigations that will be undertaken to support the Code Amendment.

<b>Further Investigations Proposed</b>	<b>Explanation of how the further investigations propose to address an identified issue or question</b>
Analysis of existing tree protection and planting policies in the Code	A more detailed analysis of existing tree protection policies in the Code will occur and further investigations will be undertaken to determine the most appropriate policy framework for the protection of trees and the preservation and enhancement of urban tree canopy.
Spatial analysis of overlay expansion	<p>The Code Amendment will investigate opportunities to extend the Urban Tree Canopy Overlay over Master Planned Neighbourhood Zones, and to extend both the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay townships in Greater Adelaide.</p> <p>Interaction of the Regulated and Significant Tree Overlay with the <i>Native Vegetation Act 1991</i> will be investigated.</p>
Develop incentive policy	Further investigations will be undertaken to help strengthen existing Code policies and identify opportunities for policy incentives and design innovations that could be incorporated into the Code to encourage applicants to consider design outcomes that would allow for larger, mature trees to be retained.
Investigate assessment pathways for tree-damaging activity in certain circumstances	The Code Amendment will review assessment pathways for the removal of regulated or significant trees located in proximity of an existing dwelling or in-ground swimming pool. In these circumstances, risks to safety and damage to substantial buildings of value are more likely, therefore investigations will consider the appropriate policy/pathway. Investigations will also consider the appropriate pathway for tree removal in association with development undertaken by the SAHT where tree replanting is proposed in accordance with an established Strategy.

## 4.3. Engagement Already Undertaken

A range of communication and engagement has already been undertaken in relation to this Code Amendment, as part of the implementation of the Code, the introduction

of the Urban Tree Canopy Off-set Scheme and the preparation of Practice Direction 16, the Commission's Open Space and Trees Project and the recent changes to the Regulations. The engagement already undertaken includes:

- Engagement with staff from the Department for Environment and Water (DEW), Green Adelaide, the State Herbarium and Botanic Gardens and the Office for Design and Architecture SA (ODASA), as part of the Commission's Project.
- Engagement with key stakeholders, industry professionals and the community as part of the Expert Panel's independent review of the *Planning, Development and Infrastructure Act 2016* and the Code.
- Engagement with councils throughout the State as part of the implementation of the Code. The feedback from councils included the need for improved tree policies in the Code, larger tree canopy targets and higher fees in lieu of planting new trees, to better reflect the cost of planting new trees.

#### **4.4. Further Engagement Proposed**

In addition to the engagement already undertaken and identified above, the following additional engagement will be undertaken to support the Code Amendment:

- Collaboration with councils affected by this Code Amendment will continue to:
  - Review draft policies and seek their feedback, knowledge and support on the proposed outcomes, especially where local knowledge may be required.
  - Review township boundaries and urban areas in Greater Adelaide to ensure the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay are appropriately applied.
- Community engagement
  - Broader community consultation to provide an opportunity for any councils, agencies, interested community members, organisations and industry professionals to comment on the proposed outcomes of the Code Amendment.
- Consultation with any person or body specified by the Commission under section 73(6)(e) of the Act.
  - The Engagement Plan will outline the specific method and nature of consultation.

## **5. CODE AMENDMENT PROCESS**

### **5.1. Engagement Plan**

The Code Amendment process will occur in accordance with the Community Engagement Charter and *Practice Direction 2 – Consultation on the Preparation or Amendment of a Designated Instrument* (Practice Direction 2).

The Designated Entity will prepare an Engagement Plan prior to the commencement of engagement on the proposed Code Amendment. The Engagement Plan will include the following mandatory consultation requirements (which may be in addition to the engagement outlined in this Proposal to Initiate):

- Given the proposal is generally relevant to councils, the Local Government Association must be notified in writing and consulted on the proposed Code Amendment;
- Consultation must also occur with any person or body specified by the State Planning Commission under section 73(6)(e) of the Act.

## **5.2. Engagement Report**

Once engagement on the Code Amendment is complete, the Designated Entity will prepare an Engagement Report under section 73(7) of the Act.

The Designated Entity must ensure that a copy of the Engagement Report is furnished on the Minister and also published on the SA Planning Portal. This will occur in accordance with *Practice Direction 2 - Preparation and Amendment of Designated Instruments*.

The Engagement Plan and the Engagement Report will also be considered by the State Planning Commission during the final stages of the Code Amendment process.

The Commission will provide a report to the Environment, Resources and Development Committee of Parliament under section 74(3) of the Act. The Commission's report will provide information about the reason for the Code Amendment, the consultation undertaken on the Code Amendment and any other information considered relevant by the Commission.

ATTACHMENT A

Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024

(#21700513)

Draft

29.4.2024 (19)

South Australia

**Planning, Development and Infrastructure (General)  
(Regulated and Significant Trees) Amendment  
Regulations 2024**

under the *Planning, Development and Infrastructure Act 2016*

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**Contents**

Part 1—Preliminary

- 1 Short title
- 2 Commencement

Part 2—Amendment of *Planning, Development and Infrastructure (General) Regulations 2017*

- 3 Amendment of regulation 3F—Regulated and significant trees
- 4 Insertion of regulation 18A  
18A Planning and Design Code—significant trees
- 5 Amendment of regulation 59—Regulated and significant trees
- 6 Amendment of Schedule 4—Exclusions from definition of development
- 7 Amendment of Schedule 13—State agency development exempt from approval

Schedule 1—Transitional provision

- 1 Transitional provision
- 

**Part 1—Preliminary**

**1—Short title**

These regulations may be cited as the *Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024*.

**2—Commencement**

These regulations come into operation on the day on which they are made.

**Part 2—Amendment of *Planning, Development and Infrastructure (General) Regulations 2017***

**3—Amendment of regulation 3F—Regulated and significant trees**

- (1) Regulation 3F(1)—delete "2 m" wherever occurring and substitute in each case:

1 m

**Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024**

Part 2—Amendment of *Planning, Development and Infrastructure (General) Regulations 2017*

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- (2) Regulation 3F(1)—delete "625 mm" and substitute:  
310 mm
- (3) Regulation 3F(2)(a)—delete "3 m" wherever occurring and substitute in each case:  
2 m
- (4) Regulation 3F(4)(a)—delete "10 m" and substitute:  
3 m
- (5) Regulation 3F(4)(a)—after the entry relating to "*Agonis flexuosa* (Willow Myrtle)" insert:  
*Angophora* (any tree of the genus)  
*Corymbia* (any tree of the genus)
- (6) Regulation 3F(4)(b)—delete paragraph (b) and substitute:  
(b) to a tree of a species designated (from time to time) by the Minister by notice published on the SA planning portal; or
- (7) Regulation 3F—after subregulation (4) insert:  
(4a) A notice under subregulation (4)(b) designating a species of tree—  
(a) may be of general or limited application; and  
(b) without limiting paragraph (a), may make different provision in relation to a species of tree according to the location of the tree, the circumstances or any other specified factor.
- (8) Regulation 3F(6)—after paragraph (b) insert:  
and  
(c) that is undertaken at least 5 years after pruning of a kind referred to in this subregulation was last undertaken in relation to the tree,

**4—Insertion of regulation 18A**

Before regulation 19 insert:

**18A—Planning and Design Code—significant trees**

For the purposes of section 68(1)(a)(iv) and (b)(iv) of the Act, a prescribed criterion is that the significant tree or stand of trees (as the case requires) makes a significant contribution to the urban tree canopy of the local area.

**5—Amendment of regulation 59—Regulated and significant trees**

- (1) Regulation 59(2)(a)—delete "specified under regulation 3F(4)(b)" and substitute:  
designated under regulation 3F(4)(b) (insofar as the designation of that species of tree applies to the location of the development)
- (2) Regulation 59(2)(b)—delete "10 m" and substitute:  
3 m

**Draft**

Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment  
Regulations 2024  
*Amendment of Planning, Development and Infrastructure (General) Regulations 2017—Part 2*

**6—Amendment of Schedule 4—Exclusions from definition of development**

- (1) Schedule 4, clause 18(1)(a)—delete paragraph (a) and substitute:
- (a) subject to this clause, the tree is on land on which development for the purposes of the provision of social infrastructure is being, or is to be, carried out by or on behalf of the Minister responsible for the administration of the *Highways Act 1926* (the *relevant land*); or
- (2) Schedule 4, clause 18—after subclause (1) insert:
- (1a) The following conditions are prescribed in respect of the exclusion under subclause (1)(a) insofar as the tree-damaging activity constitutes the killing, destruction or removal of a regulated tree:
- (a) the Minister responsible for the administration of the *Highways Act 1926* (the *relevant Minister*) must—
- (i) ensure the prescribed number of trees are planted and maintained on the relevant land, or on adjacent land or other land within the area of the council in which the relevant land is situated, to replace the regulated tree (with the cost of planting to be the responsibility of the relevant Minister and the cost of maintenance to be the responsibility of the owner of the land); or
- Drafting note—**
- If what you mean by a related area is land within the same council area, it seems better to state this here. It isn't otherwise clear that such land is a "related area" in relation to the relevant land.
- (ii) if the relevant Minister considers that it is not practicable for replacement trees to be planted in accordance with subparagraph (i)—ensure an amount calculated in accordance with a fee notice made for the purposes of the Act is made into the relevant fund in lieu of planting 1 or more replacement trees under subparagraph (i);
- (b) any replacement trees must satisfy the following criteria:
- (i) the trees are not trees within a species designated under regulation 3F(4)(b) (insofar as the designation of that species of tree applies to the location of the tree-damaging activity);
- (ii) the trees are not planted within 3 m of an existing dwelling or an existing in-ground swimming pool.
- (1b) For the purposes of subclause (1a)(a), the prescribed number of trees is—
- (a) if the tree-damaging activity is in relation to a regulated tree—2 trees to replace the regulated tree; or

**Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024**

Part 2—Amendment of *Planning, Development and Infrastructure (General) Regulations 2017*

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- (b) if the tree-damaging activity is in relation to a significant tree—3 trees to replace the significant tree.
- (3) Schedule 4, clause 18(2)—after "subclause (1)(b)" insert:  
and (1a)(b)(ii)
- (4) Schedule 4, clause 18—after subclause (2) insert:
  - (3) In this clause—
    - relevant fund* has the same meaning as in section 127(7) of the Act;
    - social infrastructure* means buildings or areas that facilitate the delivery of social services by a government or other service provider (whether a fee is charged for the service or not);
    - social services* includes health services, disability services, aged care, childcare, education, justice and emergency services, arts and culture, sport and recreation, social housing and any other service provided for community benefit.

**Drafting note—**

On reflection, we think it would be better to refer to community benefit rather than "broad" community benefit.

**7—Amendment of Schedule 13—State agency development exempt from approval**

Schedule 13, clause 2(1)(w)(ii)—delete subparagraph (ii) and substitute:

- (ii) that—
  - (A) is on any land on which a road is located or is proposed to be built or widened; and
  - (B) is undertaken by or with the written authority of the Commissioner for Highways; or

**Schedule 1—Transitional provision**

**1—Transitional provision**

The amendments effected by these regulations do not apply in relation to any activity that is—

- (a) undertaken for the purposes of a development that is the subject of—
  - (i) an application for development authorisation under the *Planning, Development and Infrastructure Act 2016* lodged before the commencement of this clause; or
  - (ii) a development authorisation under the *Planning, Development and Infrastructure Act 2016* granted before the commencement of this clause,

if the activity is undertaken after development authorisation is granted and before the day falling 12 months after the commencement of this clause; or

**Draft**

**Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment  
Regulations 2024**  
Transitional provision—Schedule 1

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- (b) undertaken by or on behalf of the South Australian Housing Trust for the purposes of a development, or in connection with the demolition of a dwelling or residential flat building, before 1 January 2027 (regardless of whether the application for development authorisation is lodged, or development authorisation is granted, in respect of the development before or after the commencement of this clause).

**Editorial note—**

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

with the advice and consent of the Executive Council  
on

No            of 2024

21710503

21 August 2024

83 Pirie Street  
Adelaide SA 5000GPO Box 1815  
Adelaide SA 500108 7109 7466  
saplanningcommission@sa.gov.au

By email: [REDACTED]

Dear [REDACTED]

### Initiation of the Tree Protection and Planting Code Amendment

I write to advise you that the State Planning Commission (the Commission) has initiated the Tree Protection and Planting Code Amendment (the Code Amendment), pursuant to section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016* (the Act).

The Code Amendment seeks to preserve and enhance South Australia's tree canopy by updating tree protection policies, promoting design innovation to retain large trees, reviewing assessment pathways and policies for tree removal in certain cases, and extending both the Regulated and Significant Tree Overlay and the Urban Tree Canopy Overlay to cover more parts of South Australia.

Subject to investigations, the Code Amendment is anticipated to propose the following policy and spatial amendments in response to requests from the South Australian Government, including recommendations of the expert panel in its review of the state's planning system:

- Review policies in the Regulated and Significant Tree Overlay guiding the assessment of tree-damaging activity to consider a regulated/significant tree's contribution to urban tree canopy (at present, this Overlay does not specifically mention tree canopy).
- Review and update existing Code policies to provide design innovations and incentives that can be used to retain large trees when undertaking new development. For example, investigate whether reduced site areas/setbacks are appropriate for a residential infill development that retains mature trees to achieve appropriate clearance from trees. In effect, this flexible policy should incentivise the retention of trees on development sites while still providing for the same development yield.
- Require tree planting/retention when new houses are built in greenfield areas by expanding the spatial application of the Urban Tree Canopy Overlay to master-planned areas.

- Provide protection for a greater number of large, mature trees, and require tree planting/retention with new homes, by expanding the spatial application of the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay to townships in Greater Adelaide.
- Investigate the appropriate assessment pathway/policies for the removal of a regulated/significant tree in proximity of an existing dwelling or in-ground swimming pool.
- Investigate a streamlined assessment pathway for tree-damaging activity where tree replanting will occur in accordance with a Tree Planting Strategy developed by the South Australian Housing Trust.

A copy of the signed Proposal to Initiate is enclosed for your reference.

Regarding overlay expansion to townships, I acknowledge the recommendation of the expert panel did not limit this geography to Greater Adelaide. However, it is considered appropriate to investigate extending these tree protection/planting applications to townships within Greater Adelaide initially, acknowledging the investigations required to determine what constitutes a 'township' and interactions with the *Native Vegetation Act 1991*.

It's noted that any councils of townships outside of Greater Adelaide could request to spatially apply the Regulated and Significant Tree Overlay or Urban Tree Canopy Overlay to their townships, or to declare a particular tree or stand of trees to be significant under section 68 of the Act, through a separate Code Amendment process.

The Commission intends to work collaboratively with key stakeholders and local government to refine the details of the Code Amendment, including the drafting of policy, changes to the spatial application of Code Overlays (where appropriate), and instructions for this Code Amendment. Thereafter, public consultation will be undertaken in accordance with the Community Engagement Charter.

Should you require further information, please contact Mr Jason Bailey from Planning and Land Use Services within the Department for Housing and Urban Development on [REDACTED] or via email at: [REDACTED].

Yours sincerely



**Craig Holden**  
Chair

Enc Signed Proposal to Initiate the Tree Protection and Planting Code Amendment

21710488

21 August 2024

Hon Nick Champion MP  
Minister for Planning83 Pirie Street  
Adelaide SA 5000GPO Box 1815  
Adelaide SA 500108 7109 7466  
saplanningcommission@sa.gov.auBy email: [REDACTED]

Dear Minister

**Initiation of the Tree Protection and Planting Code Amendment**

Further to your letter dated 16 May 2024, I write to advise you that the State Planning Commission (the Commission) has initiated the Tree Protection and Planting Code Amendment (the Code Amendment) pursuant to section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016* (the Act).

The Code Amendment seeks to preserve and enhance South Australia's tree canopy by updating tree protection policies, promoting design innovation to retain large trees, reviewing assessment pathways and policies for tree removal in certain cases, and extending both the Regulated and Significant Tree Overlay and the Urban Tree Canopy Overlay to cover more parts of South Australia.

Subject to investigations, the Code Amendment is anticipated to propose the following policy and spatial amendments to the Planning and Design Code:

- Review policies in the Regulated and Significant Tree Overlay guiding the assessment of tree-damaging activity to consider a regulated/significant tree's contribution to urban tree canopy (at present, this Overlay does not specifically mention tree canopy).
- Review and update existing Code policies to provide design innovations and incentives that can be used to retain large trees when undertaking new development. For example, investigate whether reduced site areas/setbacks are appropriate for a residential infill development that retains mature trees to achieve appropriate clearance from trees. In effect, this flexible policy should incentivise the retention of trees on development sites while still providing for the same development yield.
- Require tree planting/retention when new houses are built in greenfield areas by expanding the spatial application of the Urban Tree Canopy Overlay to master-planned areas.
- Provide protection for a greater number of large, mature trees, and require tree planting/retention with new homes, by expanding the spatial application of the Regulated and Significant Tree Overlay and Urban Tree Canopy Overlay to townships in Greater Adelaide.

- Investigate the appropriate assessment pathway/policies for the removal of a regulated/significant tree in proximity of an existing dwelling or in-ground swimming pool.
- Investigate a streamlined assessment pathway for tree-damaging activity where tree replanting will occur in accordance with a Tree Planting Strategy developed by the South Australian Housing Trust.

A copy of the Proposal to Initiate is enclosed for your reference.

Regarding overlay expansion to townships, I acknowledge your letter and the recommendation of the Expert Panel did not limit this geography to Greater Adelaide. However, it is considered appropriate to investigate extending these tree protection/planting applications to townships within Greater Adelaide initially, acknowledging the investigations required to determine what constitutes a 'township' and interactions with the *Native Vegetation Act 1991*.

It's noted that any councils of townships outside of Greater Adelaide could request to spatially apply the Regulated and Significant Tree Overlay or Urban Tree Canopy Overlay to their townships, or to declare a particular tree or stand of trees to be significant under section 68 of the Act, through a separate Code Amendment process.

The Commission intends to work collaboratively with key stakeholders and local government to refine the details of the Code Amendment, including the drafting of policy, changes to the spatial application of Code Overlays (where appropriate), and instructions for this Code Amendment. Thereafter, public consultation will be undertaken in accordance with the Community Engagement Charter.

Further to the other requests in your letter dated 16 May 2024, the Commission notes that work on a design standard, practice guideline and guidance material for the listing of significant trees in the Code will be considered outside of this Code Amendment process.

Should you require further information, please contact Mr Jason Bailey from Planning and Land Use Services within the Department for Housing and Urban Development on [REDACTED] or via email at: [REDACTED].

Yours sincerely



**Craig Holden**  
Chair

# Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024

**Draft**

29.4.2024 (19)

South Australia

## **Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024**

under the *Planning, Development and Infrastructure Act 2016*

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### **Contents**

#### Part 1—Preliminary

- 1 Short title
- 2 Commencement

#### Part 2—Amendment of *Planning, Development and Infrastructure (General) Regulations 2017*

- 3 Amendment of regulation 3F—Regulated and significant trees
- 4 Insertion of regulation 18A
  - 18A *Planning and Design Code—significant trees*
- 5 Amendment of regulation 59—Regulated and significant trees
- 6 Amendment of Schedule 4—Exclusions from definition of development
- 7 Amendment of Schedule 13—State agency development exempt from approval

#### Schedule 1—Transitional provision

- 1 Transitional provision
- 

### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024*.

#### **2—Commencement**

These regulations come into operation on the day on which they are made.

### **Part 2—Amendment of *Planning, Development and Infrastructure (General) Regulations 2017***

#### **3—Amendment of regulation 3F—Regulated and significant trees**

- (1) Regulation 3F(1)—delete "2 m" wherever occurring and substitute in each case:

1 m

- (2) Regulation 3F(1)—delete "625 mm" and substitute:  
310 mm
- (3) Regulation 3F(2)(a)—delete "3 m" wherever occurring and substitute in each case:  
2 m
- (4) Regulation 3F(4)(a)—delete "10 m" and substitute:  
3 m
- (5) Regulation 3F(4)(a)—after the entry relating to "*Agonis flexuosa* (Willow Myrtle)" insert:  
*Angophora* (any tree of the genus)  
*Corymbia* (any tree of the genus)
- (6) Regulation 3F(4)(b)—delete paragraph (b) and substitute:
  - (b) to a tree of a species designated (from time to time) by the Minister by notice published on the SA planning portal; or
- (7) Regulation 3F—after subregulation (4) insert:
  - (4a) A notice under subregulation (4)(b) designating a species of tree—
    - (a) may be of general or limited application; and
    - (b) without limiting paragraph (a), may make different provision in relation to a species of tree according to the location of the tree, the circumstances or any other specified factor.
- (8) Regulation 3F(6)—after paragraph (b) insert:  
and
  - (c) that is undertaken at least 5 years after pruning of a kind referred to in this subregulation was last undertaken in relation to the tree,

#### 4—Insertion of regulation 18A

Before regulation 19 insert:

##### 18A—Planning and Design Code—significant trees

For the purposes of section 68(1)(a)(iv) and (b)(iv) of the Act, a prescribed criterion is that the significant tree or stand of trees (as the case requires) makes a significant contribution to the urban tree canopy of the local area.

#### 5—Amendment of regulation 59—Regulated and significant trees

- (1) Regulation 59(2)(a)—delete "specified under regulation 3F(4)(b)" and substitute:  
designated under regulation 3F(4)(b) (insofar as the designation of that species of tree applies to the location of the development)
- (2) Regulation 59(2)(b)—delete "10 m" and substitute:  
3 m

## Draft

### 6—Amendment of Schedule 4—Exclusions from definition of development

- (1) Schedule 4, clause 18(1)(a)—delete paragraph (a) and substitute:
  - (a) subject to this clause, the tree is on land on which development for the purposes of the provision of social infrastructure is being, or is to be, carried out by or on behalf of the Minister responsible for the administration of the *Highways Act 1926* (the *relevant land*); or
- (2) Schedule 4, clause 18—after subclause (1) insert:
  - (1a) The following conditions are prescribed in respect of the exclusion under subclause (1)(a) insofar as the tree-damaging activity constitutes the killing, destruction or removal of a regulated tree:
    - (a) the Minister responsible for the administration of the *Highways Act 1926* (the *relevant Minister*) must—
      - (i) ensure the prescribed number of trees are planted and maintained on the relevant land, or on adjacent land or other land within the area of the council in which the relevant land is situated, to replace the regulated tree (with the cost of planting to be the responsibility of the relevant Minister and the cost of maintenance to be the responsibility of the owner of the land); or
      - (ii) if the relevant Minister considers that it is not practicable for replacement trees to be planted in accordance with subparagraph (i)—ensure an amount calculated in accordance with a fee notice made for the purposes of the Act is made into the relevant fund in lieu of planting 1 or more replacement trees under subparagraph (i);
    - (b) any replacement trees must satisfy the following criteria:
      - (i) the trees are not trees within a species designated under regulation 3F(4)(b) (insofar as the designation of that species of tree applies to the location of the tree-damaging activity);
      - (ii) the trees are not planted within 3 m of an existing dwelling or an existing in-ground swimming pool.
  - (1b) For the purposes of subclause (1a)(a), the prescribed number of trees is—
    - (a) if the tree-damaging activity is in relation to a regulated tree—2 trees to replace the regulated tree; or

**Drafting note—**

If what you mean by a related area is land within the same council area, it seems better to state this here. It isn't otherwise clear that such land is a "related area" in relation to the relevant land.

- (b) if the tree-damaging activity is in relation to a significant tree—3 trees to replace the significant tree.
- (3) Schedule 4, clause 18(2)—after "subclause (1)(b)" insert:  
and (1a)(b)(ii)
- (4) Schedule 4, clause 18—after subclause (2) insert:
  - (3) In this clause—
    - relevant fund* has the same meaning as in section 127(7) of the Act;
    - social infrastructure* means buildings or areas that facilitate the delivery of social services by a government or other service provider (whether a fee is charged for the service or not);
    - social services* includes health services, disability services, aged care, childcare, education, justice and emergency services, arts and culture, sport and recreation, social housing and any other service provided for community benefit.

**Drafting note—**

On reflection, we think it would be better to refer to community benefit rather than "broad" community benefit.

**7—Amendment of Schedule 13—State agency development exempt from approval**

Schedule 13, clause 2(1)(w)(ii)—delete subparagraph (ii) and substitute:

- (ii) that—
  - (A) is on any land on which a road is located or is proposed to be built or widened; and
  - (B) is undertaken by or with the written authority of the Commissioner for Highways; or

**Schedule 1—Transitional provision****1—Transitional provision**

The amendments effected by these regulations do not apply in relation to any activity that is—

- (a) undertaken for the purposes of a development that is the subject of—
  - (i) an application for development authorisation under the *Planning, Development and Infrastructure Act 2016* lodged before the commencement of this clause; or
  - (ii) a development authorisation under the *Planning, Development and Infrastructure Act 2016* granted before the commencement of this clause,

if the activity is undertaken after development authorisation is granted and before the day falling 12 months after the commencement of this clause; or

## Draft

### Planning, Development and Infrastructure (General) (Regulated and Significant Trees) Amendment Regulations 2024

Transitional provision—Schedule 1

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- (b) undertaken by or on behalf of the South Australian Housing Trust for the purposes of a development, or in connection with the demolition of a dwelling or residential flat building, before 1 January 2027 (regardless of whether the application for development authorisation is lodged, or development authorisation is granted, in respect of the development before or after the commencement of this clause).

#### Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

#### Made by the Governor

with the advice and consent of the Executive Council

on

No            of 2024



23MPCS 01438

Mr Craig Holden  
Chair  
State Planning Commission

By email: [saplanningcommission@sa.gov.au](mailto:saplanningcommission@sa.gov.au)

Dear Mr Holden

I am writing to advise of recent amendments to the *Planning, Development and Infrastructure (General) Regulations 2017* relating to the protection of urban trees.

These changes reflect the State Government's strong commitment to revise tree loss regulations to match Australia's best practice as well as to protect and increase tree canopy to better reflect the value of these trees within our communities. In summary, these changes include:

- Reducing the trunk circumference where protections are triggered to one metre for regulated trees and two metres for significant trees.
- Reducing exemptions for trees near dwellings and swimming pools to three metres.
- Limiting substantial pruning of regulated and significant trees to no more than 30 per cent of a tree's canopy every five years.
- Increasing the scope for councils to include trees on the significant trees register in the Planning and Design Code (the Code).
- Providing flexibility in the list of exempt tree species to adapt to local needs and community views.
- Providing a new exemption for vital social infrastructure projects delivered by the Minister for Infrastructure and Transport, provided that replacement planting or offset payments occur.
- Providing for transitional arrangements to support these amendments.

These regulatory changes implement recommendations of the Commission through Part 1 and 2 of the Commission's Open Space and Trees Project. They also implement a number of key recommendations from the Expert Panel undertaking the implementation review of the planning system (the Expert Panel).

In order to further the State Government's policy position on the protection of urban trees, I request the State Planning Commission (the Commission) undertake the following additional work:

- Prepare a Design Standard to provide minimum requirements for urban tree planting and maintenance for public realm trees within greenfield developments.

## OFFICIAL

- Investigate and progress (as the Commission considers appropriate) amendments to the Code to:
  - Require consideration of a tree's contribution to urban canopy in the assessment of a development application seeking to remove a regulated or significant tree.
  - Strengthen policy to support design innovation where large trees are retained.
  - Investigate an appropriate assessment pathway for trees between 3-10 metres of a dwelling or swimming pool where payment of the relevant offset fee is made.
  - Extend the Urban Tree Canopy Overlay to the Master Planned Neighbourhood Zone (capturing greenfield developments).
  - Extend the Regulated and Significant Tree Overlay and the Urban Tree Canopy Overlay to townships outside of metropolitan Adelaide (subject to accurate township boundaries being identified).
- Develop a Practice Guideline for tree assessments to provide consistency and broader consideration of tree value across local councils.
- Provide a streamlined process or guidance material (as the Commission considers appropriate) for councils to include significant trees in the Code.
- Support the South Australian Housing Authority in developing a holistic Tree Planting Strategy and investigate a streamlined assessment pathway in the Code where tree replanting occurs in accordance with that strategy.

Given the importance of these policy reforms, I am open to considering placing on early commencement a Code Amendment required to implement these changes, subject to having first considered the Commission's advice on that matter.

This body of policy work may form a revised Part 3 of the Commission's Open Space and Trees Project, which I am advised is reflected in the Commission's current work plan.

I acknowledge the Commission has previously provided me with advice on an additional trigger for protection of trees based on canopy size. However, this did not include advice on a specific preferred option, mechanism, or canopy measurement. In addition, the use of tree height as a trigger for tree protection is used in other jurisdictions and warrants further investigation. These are important matters which could have broad-reaching impacts for protection of more urban trees, but also for the delivery of affordable infill housing stock across metropolitan Adelaide.

As such, in addition to the above policy work, I also request the Commission to further investigate and provide advice on the best regulatory option for protection of trees of a certain height and canopy size. I have also requested advice from the Environment, Resources and Development Committee of Parliament on this matter.

I look forward to working with the Commission on these important reforms.

Yours sincerely

**Hon Nick Champion MP**  
Minister for Planning

/ / 2024