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Environment, Resources and Development Committee
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Submission to the Parliamentary Inquiry - The Urban Forest

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The importance of trees in our urban landscape is manifest. I thank the Committee for the opportunity to contribute to the Inquiry and for highlighting the urgent need to increase tree canopy in our cities.

The purpose of this submission is twofold; to complement the City of Unley's formal submission to the Parliamentary Inquiry into the Urban Forest, and to highlight how the current rules regulating planning and development in South Australia appear to be 'unenforceable' by local government entities, causing the continual loss of trees in urban landscapes.

The submission will address the questions set out in the Terms of Reference as follows:

- 1. Best practice and innovative measures to assist in the selection and maintenance of site appropriate tree species to improve the resilience of the urban forest, with a focus on trees for urban infill developments;**

Land is key

It must be noted that the 'best practice and innovative measures to assist in the selection and maintenance of site appropriate tree species' is to first *have* sufficient land to plant trees on.

The City of Unley has the lowest amount of publicly owned space of any Council area in South Australia, at just 8.8 m² per person. We have already implemented an accelerated tree planting program which if maintained in the current Council's budget, will see all available council land and street kerbs fully planted within the next four years. Therefore, any attempt to increase tree canopy in Unley requires measures beyond Council simply planting trees on its own land.

Firstly, it requires the *purchase* of additional land by Council to plant trees on. Furthermore, it requires a focus on encouraging the planting and retention of trees on private land. We cannot simply rely on the use of public land to ensure the existence and maintenance of sufficient trees. To achieve the State Government's tree canopy

target of 31%, tree canopy levels on private property in Unley need to increase from 22.34% in 2021¹ to 27% overall.

In December 2022, Brisbane City Council recognised that the key to provide for trees is land, and specifically, private land. Council resolved to implement a 15% mandatory provision of land in all new developments, meaning development applications will not be approved without the mandatory 15% included. The “objective is to get more, healthier, bigger trees within new developments,” City Planning Chair Adam Allan stated in the following ABC article [Brisbane 15% land mandatory for trees](#).

The requirement for 15% of land is to allow for deep planting, which has replaced the previous requirement of 10%. This is a good start to combat the loss of trees, however, there are concerns from some Brisbane City Councillors that “the amendment would not be enforced sufficiently” due to the apparent lack of penalty¹. I will expand on this, and the need for an incentive scheme to provide the resources for land later in the paper.

Significant and regulated trees

In order to ‘improve the resilience of the urban forest’, the planning rules purport to ensure, (no matter the species) healthy significant or regulated trees are retained and maintained.

Councils should have the full ability to enforce the protection of such trees in all cases and the power to provide incentive schemes to *encourage* the retention of trees and the prevention of the removal of significant and regulated trees in particular.

2. Legislative and regulatory options to improve the resilience and longevity of trees comprising the urban forest

Planning and development rules

There can be cited several examples to demonstrate the encumbrance on local government entities which prevents the reasonable enforcement of rules which allow the retention of trees.

A \$552,857.07 example can be found in the case of *The Corporation of the City of Unley v Crichton & Anor 2021*. Council was prevented from protecting two significant and regulated trees.

In October 2015 residents of Hyde Park Mr Crichton and Mr Bendyk employed Tempest Trees and Gardens Pty Ltd to prune two significant and regulated trees on their neighbour’s property but which were overhanging their properties. The trees then became the subject of a court case in which the City of Unley sued both parties based on unapproved development and damage to both trees.

Their neighbour, Ms Simons, was away at the time the pruning occurred and reported the apparent damage to council when she returned. Council then made contact with Mr Crichton regarding the issue of tree-damaging activity, and in due course charges were laid on that basis.

The finding of the Judge was that no more than 20 per cent of the crown of each tree had been removed, therefore no damage to the trees had occurred. Unley disputed this verdict claiming that the Judge misinterpreted what is considered tree damaging activity. However, it was decided that the crown of the tree was defined as “living branches and foliage of the tree” and what was pruned was found to be mistletoe and therefore parasitic to the host.

The trees were both identified as '*Eucalyptus Camaldulensis*', or River Red Gums, and were deemed 'regulated trees' as per the meaning of section 4(1) of the *Development Act 1993* (SA) and regulation 6A of the *Development Regulations 2008* (SA). Despite this, Council was unable to recover costs associated with the damage to the trees.

This case cost the City of Unley over \$552,857.07 in legal fees to try and recoup the costs, and to reiterate the vital importance of protecting significant and regulated trees. Costly legal battles and penalties are not the solution. We need incentives based on outcomes to achieve a solution.

Tree removal by stealth

When it comes to the protection of trees in urban development, there appears to be a known 'loophole' in the planning and development regulations. Developers are required to retain a significant or regulated tree during the development stages, and then 'use' the planning rules to remove the tree after the development is completed.

Trees within 10 m of your home in bushfire risk zones, and within 3 m of your home can be removed without a permit.

Planning by stealth occurs in steps. E.g.

1. A development that complies is approved,
2. then amendments to the approved plan are made,
3. then the resulting plans are approved.
4. These plans result in a development within 3 meters of a regulated /significant tree. The tree goes because it is within 3 meters of a building.

3. Solutions.

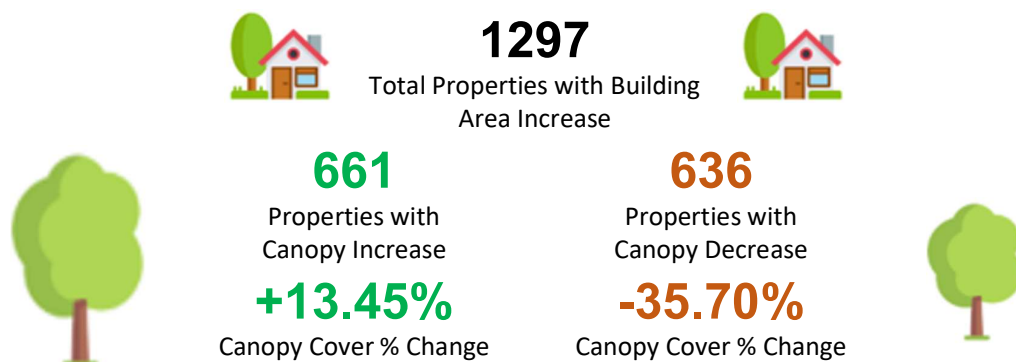
Tree Offset Scheme

Over the past four years, Unley has investigated numerous models which would see a financial mechanism implemented to encourage the retention/increase of

tree canopy cover on private properties with a goal of reaching the State Government's 31% target. Like the Brisbane model, our objective is to increase tree canopy on private land, but most importantly, goes further to include an incentive scheme ensuring compliance and encouraging developers to retain the trees.

Our current proposal requires the permission of the Minister to implement a scheme which would affect new developments that increase the built form but do not meet a 15% tree canopy cover. If developments do *not* meet this target, they will incur additional rates. This stands in contrast to the Brisbane City Council's requirement which doesn't appear to include a measure which would be put in place should a developer fail to meet the 15% target.

The Unley Council LiDar data enables us to an accuracy of 4cm² to know that over 50% of our current tree canopy loss is due to just under half of new developments that increase the built form. As can be seen in the data below over half actually increase their tree canopy cover.



The scheme we propose is an incentive scheme for both developers and subsequent owners to comply with the spirit of the current planning rules. It is not retrospective.

No owner of an existing property in Unley will ever pay higher rates because of the lack of trees.

Other schemes

Council has reduced the rate of loss of trees from 8 Ha per annum over the decade from 2007-2017, (four Unley Ovals) down to 4 Ha per annum. We have give-aways, advice, the printing on rate notices the percentage tree canopy on existing properties, and other educational promotions in spring fair etc.... BUT: Council will not be able to plant the current 2Ha of trees each year as we run out of land to plant trees on. The paper attached "INNER SUBURBAN UNLEY IS THE CANARY IN THE MINE" details our plans, challenges and successes over the past and current decade. **A one off, offset payment is not a solution, it is a licence to not plant trees on private land.** Without the support of the Minister for an Offset Fund as proposed, Unley Council will fail to deliver the State Government's 31% target and will achieve as low as 12.9% (see attached paper entitled *Will Unley's Children see our Canopy Cover drop to 13%?*). This will mean 50+°C during Summer.