



Environmental Defenders Office

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RE: INQUIRY INTO URBAN GREEN SPACES

The Environmental Defenders Office (EDO) is the largest environmental legal centre in the Australia-Pacific, dedicated to protecting our climate, communities and shared environment by providing access to justice, running ground breaking litigation and leading law reform advocacy. The EDO appreciates the opportunity to provide a submission to this Inquiry.

This submission adopts the definition of urban green spaces as any urban land covered by vegetation of any kind, public and private, irrespective of size and function. Green spaces have a vital role in mitigating climate change, one of the greatest challenges of our time. Urban heat mapping has identified hot spots or “heat islands” in the metropolitan area. Whilst more work needs to be done with mapping we know that these areas generally have fewer green spaces, trees, shrubs and grass and can be up to 3-4°C hotter on sunny days. An increase in roofs, roads and other impermeable surfaces in residential developments puts neighbourhoods at greater risk of flooding as rain and stormwater are less easily absorbed. By cooling urban areas green spaces contribute to the economy, improve biodiversity and promote the health and wellbeing of the community.

For detailed information on the benefits of trees and more please refer to the recent report compiled by the Conservation Council of SA

<https://www.conservation.sa.gov.au/trees2020>

Despite these benefits Adelaide has a poor track record of retaining vegetation especially on private land. While Councils and communities are working hard to plant new trees, there is not enough available space on public land to replace what we are losing from people’s backyards. Unfortunately it can take many years for a newly planted tree to provide similar benefits to one that is mature. Research is not comprehensive but it is estimated that each year there is between a 1–6% reduction in tree canopy (depending on the area and the timeframe). Over 12,000 ha (10,000 Adelaide ovals) of vegetation were cleared in the five years from 2011 to 2016. Significant trees in some Adelaide suburbs are disappearing at a rate of one tree a week, which adds up to 10% of tree canopy cover disappearing every five years. Adelaide already has one of the lowest levels of canopy cover of any Australian city.



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South Australia must take urgent measures to increase tree canopy. The need for this has also been highlighted in the State's target for urban green cover to be increased by 20% by 2045. The most critical goal is to conserve and extend tree canopy cover on private land as just focussing on public trees will not be enough.

Whilst there are a range of activities which assist with public and private tree retention and planting the key problem is how the planning system deals with trees. Current and proposed planning policy will not maintain the present level let alone increase canopy cover.

There have been many types of poor developments in recent years including many subdivisions of blocks of land where all existing vegetation is completely removed, and completely inadequate replacement of trees. One of many examples of this was the recent demolition of two Tudor style houses in Deepdene Avenue Westbourne Park. Two similar dwellings around the corner in Cross Road will also be demolished. These four single dwellings will be replaced by 19 box-like units. The planning application did not include provision for greening and open space and highlights problems with policies found currently in Council development plans. The government's new Planning and Design Code is due to replace these plans later this year. Unfortunately the Code as currently proposed has policies which provide little protection for trees. Unless radically changed there is real concern that the new Code and planning system will lead to even less suitable development and greater loss of vegetation when older homes are demolished to make way for multiple new dwellings.

In addition there is very little real protection for many of our old and sizeable trees. These are known as regulated and significant trees. Over time regulation has been significantly watered down. The Development Act 1993 (SA) provides that any activity that damages a significant or regulated tree is development. These definitions now appear in the new Planning, Development and Infrastructure Act 2016.

A 'regulated tree' is any tree in Metropolitan Adelaide or townships in the Adelaide Hills Council or parts of the Mount Barker Council with a trunk circumference of **2 metres or more**. In the case of trees with multiple trunks, those with trunks with a total circumference of 2 metres or more and an average circumference 625 mm or more. The circumference is measured at a point 1 metre above natural ground level. A 'significant tree' is any tree in Metropolitan Adelaide or townships in the Adelaide Hills Council or parts of the Mount Barker Council with a trunk circumference of **3 metres or more**. In the case of trees with multiple trunks, those with trunks with a total circumference of 3 metres or more and an average circumference 625 mm or more. The circumference is measured at a point 1 metre above natural ground level. OR Any tree identified as a significant tree in the City of Adelaide, City of Burnside, City of Prospect or City of Unley Development Plans.

Any activity that could damage these trees is prohibited without development approval. Under section 4 of the Development Act 1993 (SA) '*tree damaging activity*' is defined as killing or destruction; or removal; or severing of branches, limbs, stems or the trunk of a tree; or ringbarking, topping or lopping; or any other substantial damage. There are a number of exemptions in regulations which exclude certain trees from the provisions concerning regulated and significant trees. Council approval is not required to remove a significant or regulated tree if it is:

1. one of the 22 species of exotic trees (such as Box Elder, Silver Maple, London Plane, Weeping Willow) listed in regulation 6A of the Development Regulations 2008 (SA), or
2. located within 10 metres of an existing dwelling or in-ground swimming pool (except if the tree is either a Willow Myrtle or any Eucalyptus), or
3. within 20 metres of a dwelling in Medium or High Bushfire Protection Areas, or
4. dead.

Excessive pruning can also meet the definition of '*tree damaging activity*'. Under regulation 6A(8) of the Development Regulations 2008 (SA) pruning that does not remove more than 30% of the crown of the tree and is required to remove dead/diseased wood or branches posing a risk to buildings or persons is excluded from the definition. The inclusion of exemptions and ambiguity regarding pruning have in our view weakened tree protection considerably.

In addition most applications affecting trees do not require the public to be consulted. For example in 2017 changes to regulations meant any proposals by the Department of Planning, Transport and Infrastructure and the Department of Education to remove regulated trees did not need to go out to public consultation. In recent times there have been a number of road works projects around Adelaide which have led to the removal of hundreds of trees. These include a project at Golden Grove where road widening works late in 2019 involved the removal of many significant trees. The inability of the community to have any say in these matters is unjust given the significant public interest and benefit in maintaining and enhancing Adelaide's tree canopy. These departments along with Councils have the greatest influence on the future of Adelaide's street trees.

Recommendations for changes to planning regulations:

- 1. New definition of a significant tree which is not limited to tree circumference as this is not a good measure of ecological or environmental value**
- 2. Expand definition to include a list of common and important street trees including exotics and remove dead trees exception**
- 3. Remove exemptions re 20m bushfire exemption and 10m from building and pool and dead trees**
- 4. New pruning definition which does not lead to "death by a thousand cuts"**
- 5. Remove DPTI and Department of Education exemptions in relation to public consultation**

The problems with SA's laws appeared to be recognised in the 2018 election when the Liberal party promised to conduct an "Urgent review by 2019 of all legislation and other protection measures that impact on native vegetation and significant trees to address the unsustainable rate of removal in urban and regional areas"¹. However there has been no review of the regulations referred to above. There has been as noted above proposed changes to planning policy. Whilst the draft Planning and

1

<https://www.conservation.sa.gov.au/welcome-to-new-environment-minister-david-speirs>

Design Code is meant to contain like for like policy from current development plans this is not what is contained in the draft.

The draft Code is deficient in the following areas:

1. contains a single Regulated Tree Overlay. This is in direct contrast with current Development Plan policy, which distinguishes between and provides separate policy for both regulated and significant trees. As currently proposed regulated and significant trees will not have the same level of protection under the Code as is currently the case in development plans. The regulated tree policy appears to have been consolidated within a single Regulated Tree Overlay with no higher order of policy relating to the proposed removal of a regulated tree that is a significant tree.
2. proposed criteria for a tree damaging activity that is not to be undertaken with other development does not reference the current test that “all other reasonable remedial treatments and measures must first have been determined to be ineffective”. The omission of this requirement, at least in respect of significant trees, will result in a severe weakening of the current level of protection.
3. reference has been lost to indigenous to the locality, important habitat for native fauna, part of a wildlife corridor of a remnant area of native vegetation and important to biodiversity of local area.
4. significant trees have a lesser assessment test for retention “retained where they make an important visual contribution to local character and amenity” compared to current “Significant Trees should be preserved”.

There are some positive policies in the draft Code, for example in relation to tree planting, incentives to retain trees, Water Sensitive Urban Design (WSUD) and landscaping for infill development. However the tree planting policy needs further improvement regarding the type of trees and how the trees are to be maintained. There also needs to be stronger consideration of WSUD deemed to satisfy criteria for non- residential development, and development of varied forms and scales should be applied. We also encourage a broader consideration of all aspects of integrated water management, including waterway ecology, into a single policy applying to all development.

A major concern is that many of the infill policies in the draft Code are weak and will lead to an even greater number of inappropriate infill/increased housing densities and a reduction in tree canopy. These policies include smaller building sites (we note that Adelaide has the smallest sites on average in the nation and in some proposed zones, current 2 for 1 infill developments could extend to 4 to 1 or greater), inconsistent or missing frontage provisions, front and side setback provisions, reduced maximum height provisions compared to current and increased residential flats, group dwellings, row dwellings densities. Overall minimum standards have been reduced.

Recommended changes to the draft Planning and Design Code and assessment of applications affecting trees:

- 1. Significant tree policy should be in a separate overlay.**
- 2. Significant Tree Overlay should include reference to indigenous to the locality, important habitat for native fauna, part of a wildlife corridor of a remnant area of native vegetation and important to biodiversity of local area and replace the test for retention of significant**

trees to “retained where they make an important visual contribution to local character and amenity” to “Significant Trees should be preserved”.

3. In the case of significant trees include the test of “all other remedial treatments and measures have been determined to be ineffective
4. Include specific recognition of existing tree canopy is an intergenerational asset
5. Include additional policy which recognises that all large trees both indigenous and non-indigenous species, whether in rural or urban environments have economic value and should retained until dying of natural causes.
6. Include specific policy regarding retention of Grey Box trees due to their endangered classification and the fact they often do not grow to a regulated tree size.
7. impose limits on percentage of infill development
8. encourage tree retention in design, siting and setback requirements, make removal the last resort
9. guidelines re planting and maintenance of trees on new dwelling sites to accompany mandatory tree plantings
10. Public comment allowed on all applications to remove trees
11. General policies relating to infill need to improve amenity for local neighbourhoods, for example site sizes, minimum setback and frontages, height restrictions and housing densities need to reflect current policy
12. Independent assessment of applications to remove trees- from a fund contributed to by developers

More generally we recommend the following initiatives to improve tree canopy cover:

1. Greater investment to preserve and expand green spaces particularly street verges.
2. Greater investment in education to make the community at large aware of the value of our urban vegetation
3. Greater support for the community in preserving vegetation (assistance with maintenance etc)
4. Higher penalties for unapproved tree damaging activity
5. Higher value attached to trees especially re payment by developers
6. Incentives to landowners to retain vegetation not just undertake wholesale clearance of a block

Finally, whilst we support in general the Metropolitan Open Space Scheme we recommend consideration of recent developments in NSW. New draft government guidelines recommend that parks and other open spaces should be within 200m of high-density homes and 400m from schools and workplaces. The summer bushfires, and coronavirus pandemic highlighted the necessity for the first Greener Places policy from a climate change and health perspective. The guidelines cover parks, sporting fields, open corridors and rooftop gardens and will inform planning controls at every level of urban development across state and local government. They emphasize the creation of a linked network of accessible, recreational spaces, urban tree canopy, and nurturing native habitats and ecological health within various urban and regional environments. Metrics are outlined to guide local planners, such as creating open spaces within 200m of homes in areas of more than 60 dwellings per

hectare, and 400m from schools and workplaces, with recreational land being more than 15m wide, and at least 150m for sporting areas. Greater Sydney Commission is also pushing for trees to cover 40 per cent of urban areas by 2056. We support similar policy development in South Australia.

Should you have any questions on the above, please do not hesitate to contact Melissa Ballantyne via email melissa.ballantyne@edo.org.au

Yours sincerely

Environmental Defenders Office

A handwritten signature in cursive script that reads "mBallantyne". The signature is written in black ink on a white background.

Melissa Ballantyne
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