

The Presiding Member, Development Policy
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Conservation
Council SA

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Re: Regulated Trees Development Plan Amendment

As the peak conservation body for South Australia, the Conservation Council of South Australia (Conservation Council SA) welcomes the opportunity to comment on the proposed Regulated Trees Development Plan Amendment.

Conservation Council SA is an independent, non-profit and strictly non-party political organisation representing around 50 of South Australia's environment and conservation organisations and their supporters. Conservation Council SA has developed a comprehensive view of environment policy in "South Australia in a Changing Climate: A Blueprint for a Sustainable Future"¹ This document sets out, at a strategic level, policy positions in six key environmental areas, including biodiversity, and planning and development issues.

The Conservation Council notes that these Development Plan Amendments are brought about by the *Development (Regulated Trees) Amendment Act 2009*. Prior to the passing of this Act, the Conservation Council submitted its concerns that the Act would reduce protection for significant trees without providing adequate safeguards to ensure that trees would only be pruned or destroyed where absolutely necessary. The final Act did not provide these necessary safeguards and as a result, there are no longer effective protection safeguards for regulated significant trees (as a sub-set of significant trees) between 2m and 3m circumference (at 1 m above ground).

The discussion paper states that "Without this Development Plan policy there is no means of authorities consistently and coherently assessing proposals to undertake tree damaging activity in relation to a regulated tree". In reality, the passing of these amendments will eliminate the need for technical assessment of trees between 2 m and 3 m circumference. Landholder and development clearances will not be subject to independent scrutiny and there is reduced likelihood that alternative solutions will be implemented.

The potential to establish safeguards within the DPA appears to be extremely limited given the Development (Regulated Trees) Variation Regulations 2011. However, given

¹ <http://www.conservationsa.org.au/blueprint.html>

the discussion paper's statement that "changes can occur if considered appropriate", the Conservation Council recommends that Development Plan Amendments build in a process that ensures integrity as far as possible for the two tier process to provide protection for significant trees, and specifically to the first tier covering regulated trees.

The Conservation Council SA has received concerns from its members and the community that the DPA will result in regulated trees being removed unnecessarily, where risks relating to safety, property protection and bushfire could be managed without the destruction of trees. There are also concerns that these potential risks will be deliberately misused to justify the unnecessary removal of regulated trees.

Why the Development Approval Process for the control of activities related to regulated trees could become ineffective as a result of the DPA

Whilst development approval is required for any activity that damages a regulated tree (including its root system), including removal, destruction, lopping of limbs or branches, ring-barking etc, the proposed criteria for planning authorities to approve such activities no longer include:

- A test that "all other reasonable treatments and measures have been deemed to be ineffective"
- The need for the applicant to provide an expert or technical report relating to the tree/s.

Instead, there is a new, lesser residual provision that the proposed activity can proceed where the activity that affects a regulated tree "is reasonable and expected would not otherwise be possible". This is an extremely broad test with no objective standard to define "reasonable". Also, the latter part of the phrase is particularly confusing – for example, "expected" by whom? This test essentially affords planning authorities a license to sanction the removal of regulated trees entirely at their own discretion.

Without expert or technical advice relating to clearance applications, councils and other development approval authorities may be guessing as to the condition of regulated trees and whether other reasonable steps could be taken for alternative solutions or to minimise harm to regulated trees. There also may be a greater risk of applicants challenging decisions where councils assess that a regulated tree meets requirements for protection in the absence of technical information. The situation may result in councils needing to employ specialist staff for carrying out assessments, increasing costs to all ratepayers. Furthermore, development authorities will be more likely to approve the harm or destruction of regulated trees to avoid confrontation and costs under the regulated tree framework, which is devoid of the need for independent factual information.

The Conservation Council is also concerned that the DPA has not described the level or standards of information that applicants should provide so they "can demonstrate one or more" of the exemption criteria. It is important that there be sufficient information provided by the applicant to serve as the "substitute for information that might otherwise have been sourced from expert or technical reports". Where the information is not sufficient or where there is some uncertainty, the council should seek expert technical reports.

The Conservation Council SA supports that locally endemic species are not included on any species exemption list.

Whilst the following exemptions are already provided in the Development (Regulated Trees) Variation Regulations 2011 and are not subject to this consultation we take the opportunity to voice the following concerns:

- The Conservation Council SA does not support the blanket exemption provided in the regulations for activities in medium to high bushfire zones. The entire Adelaide hills urban and township areas are zoned as either medium or high bushfire risk.
In many situations there may be a very low or zero bushfire risk caused by regulated and significant trees within these zones. In some situations such trees can even assist in reducing bushfire risk and ember attack. Each situation should be considered on its merits. The blanket exemption not only removes protection for trees in bushfire zones but also eliminates the ability to monitor and keep records on the extent of regulated /significant tree removal justified by this exemption. Furthermore, no offset provisions appear to be in place for this exemption (example shown in Appendix).
- The Conservation Council does not support the removal of significant trees on the basis that they are dead. Dead trees can provide important habitat for birdlife and can be of high biodiversity value. There are other provisions to remove trees that are unsafe. This exemption could create a perverse incentive to kill trees in order for them to be removed at a later date without requiring approval (example shown in Appendix).

Conservation Council SA Recommendations on the DPA

- The Conservation Council recommends that the DPA maintains a focus on the protection of regulated trees rather than relaxing the process to an extent where it becomes ineffective or subject to more appeals and challenges.
- The wording relating to proposed activity that "is reasonable and expected would not otherwise be possible" is so obscure and broad as to be almost meaningless as a legal standard. It should not be included in the DAP.
- The DPA should clearly define the **special circumstances** that would apply as the trigger for authorities to seek expert or technical reports. As a minimum, The Conservation Council recommends that the special circumstances are triggered and that development authorities require expert or technical reports where:
 - The relevant planning authority considers there is a lack of clear certainty on technical aspects of:
 - tree health
 - tree safety
 - material risk/ damage caused to a building
 - non removal options that could be implemented
 - There is or is likely to be community concern or challenge by third parties relating to the removal of Regulated Trees.

- Noting that a further change to the Development (Regulated Trees) Variation Regulations 2011 would be required, the Conservation Council advocates that where applicants seek to remove regulated and significant trees based on a perceived bushfire risk, that a suitably qualified Bushfire Prevention Officer provide advice on actual bushfire risk posed by the tree, including in relation to other property fuel sources.
- Also noting that a further change to the Development (Regulated Trees) Variation Regulations 2011 would be required, the Conservation Council advocates that there should be no blanket exemption for the removal of dead trees and that instead they be assessed on their merits.

If the above safeguards were incorporated into the DPA then there would be greater certainty that the intent of protecting regulated and significant trees will be achieved.

The Conservation Council SA will be speaking on this issue at the public forum planned for Wednesday 15 February at 7pm in the Graysons Room of the Mercure Grosvenor Hotel, 125 North Terrace.

I would also be happy to meet with you or your representatives to discuss these matters in more detail.

Please contact me on ph. 08 8223 5155 or at tim.kelly@conservationsa.org.au if you have any questions or follow-up in relation to this letter.

Yours sincerely

A handwritten signature in black ink that reads "Tim Kelly". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke.

Tim Kelly

Chief Executive

Examples of unprotected trees



No matter how significant, dead trees like this giant at Lochiel Park are not protected



No matter how manageable or small the actual fire risk, trees within 20 metres of a dwelling in medium and high bushfire risk urban areas and townships (such as the Adelaide hills) are not protected