

Protecting Regulated and Significant Trees

A brief overview of the legislative controls in place to protect trees in metropolitan Adelaide and some Adelaide Hills areas

What is a regulated tree?

The *Development Act 1993* and Regulations provide that a 'regulated tree' is:

- Any tree in metropolitan Adelaide and/or townships in the Adelaide Hills Council or parts of the Mount Barker Council with a trunk circumference of 2.0m or more measured at a point 1.0m above natural ground level (in the case of trees with multiple trunks, it is those with trunks with a total circumference of 2.0m or more and an average circumference of 625mm or more measured at a point 1.0m above natural ground level).

A number of tree species are exempt from regulated tree controls, either through their location or their species. These are detailed at the end of this information sheet.

What is a significant tree?

A 'significant tree' is a regulated tree that is:

- Any tree in metropolitan Adelaide and/or townships in the Adelaide Hills Council or parts of the Mount Barker Council with a trunk circumference of 3.0m or more measured at a point 1.0m above natural ground level (in the case of trees with multiple trunks, it is those with trunks with a total circumference of 3.0m or more and an average circumference of 625mm or more measured at a point 1.0m above natural ground level).

OR

- Any tree identified as a significant tree in the Development Plan of the City of Adelaide, City of Burnside, City of Prospect or City of Unley.

What activities affecting regulated and significant trees are controlled?

The *Development Act 1993* provides that any activity that damages a 'regulated tree' is 'development', and as such requires a development approval. Specifically, development approval is required for removal, killing or destruction, branch or limb lopping, ringbarking or topping, or any other substantial damage to a regulated tree, including to its root system other than maintenance pruning.

What is maintenance pruning?

Maintenance pruning of less than 30% of a tree crown is not controlled where the pruning is required to remove dead or diseased wood or to remove branches that pose a material risk to buildings or areas frequently used by people.

An exemption has been given from these controls for activities under Part 5 of the *Electricity Act 1996*, relating to the cutting and trimming of trees around powerlines. An exemption has also been given to trees planted as part of woodlots, orchards or other plantations created for the purposes of harvesting the trees or any produce and any tree that has been specified under Chapter 8, Part 1 of the *Natural Resources Management Act 2004* (declared pest plants).



Is my tree exempt from the controls?

The Development Regulations 2008 list a range of tree species as “exempt” from regulated tree controls. The trees listed are:

- limited to exotic species; and
- trees considered to have a medium-high or high risk for limb failure and infrastructure damage; and
- common trees planted in urban areas.

A guide to the tree species that are exempt is contained at the end of this information sheet. If you are uncertain if your tree is an exempt species you should seek your own professional advice to confirm the tree species and whether it is exempt from these controls.

In addition the Regulations also exempt the need for an applicant to seek approval to:

- remove a regulated or significant tree that is dead
- remove a regulated or significant tree within 20 metres of a dwelling in Medium or High Bushfire Protection Areas.

What if my neighbour’s regulated or significant tree is encroaching on my land?

Pruning back a tree branch or branches that are encroaching on your property can occur without seeking approval provided it meets the pruning requirements above.

Pruning a neighbouring tree root(s) does not require development consent provided it is maintenance pruning that is not likely to affect the health and appearance of the tree.

Where cutting back the tree would exceed the maintenance pruning requirements above or would result in root damage likely to affect the health and appearance of the tree you will be required to seek a Development Approval from the Council for any works on your side of the common property boundary.

However Council cannot charge an application fee in this situation.

When is approval required for pruning?

Approval would be required in the following cases.

- Where the pruning would remove more than 30% of the tree crown (and is also required to remove dead or diseased wood or to remove branches that pose a material risk to buildings or areas frequently used by people).

- Where the pruning is to remove branches that are not dead or diseased or to remove branches that do not pose a material risk to buildings or areas frequently used by people.
- Where the pruning of roots would affect the health and appearance of the tree.

Do I need a report from an arborist to support my application to remove a regulated or significant tree?

A council cannot request an applicant to provide an expert or technical report for a regulated tree unless the Council considers that special circumstances apply.

Do I need to plant replacement trees if I remove a regulated or significant tree?

If you have an application to remove a tree approved by Council they may seek to place a condition that replacement trees are planted or that money be paid into a fund. The amendment also specifies that the Regulations can prohibit certain trees from being planted as replacement trees. You have a right to appeal either condition.

Do I need approval to remove a regulated or significant tree that is dead?

No approval is required to remove a dead tree.

Exactly where do the controls apply?

The controls apply to all parts of metropolitan Adelaide (see map opposite) and the urban and township areas of the Adelaide Hills and Mount Barker Councils.

It should be noted that some parts of metropolitan Adelaide are also currently covered by the *Native Vegetation Act 1991*, which provides protection to native tree species. In these areas, regulated trees that are not protected by the *Native Vegetation Act 1991* will be protected by the *Development Act 1993* controls. Country areas will continue to be protected by the *Native Vegetation Act 1991*.

Who assesses an application regarding a regulated or significant tree?

The relevant Local Council is responsible for assessing a development application with respect to regulated and significant trees. In rare instances where Council has a commercial interest in the removal of a tree, the Development Assessment Commission is responsible for the assessment.

What are the fees?

Most development applications involving a regulated tree or trees will incur a fee. Fees are set out in Schedule 6 of the Development Regulations, and are updated annually.

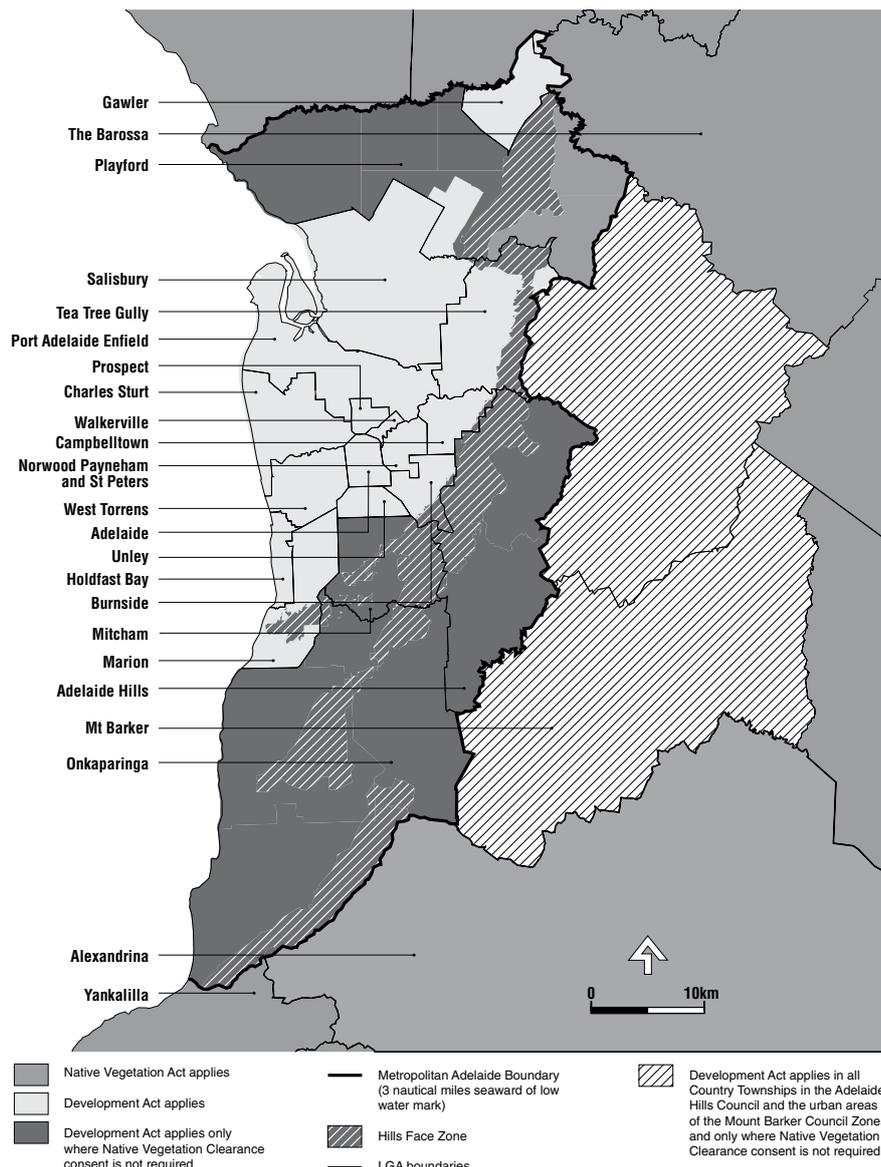
How are applications assessed?

A development application involving a regulated or significant tree must be lodged with the Council within which the tree is located. The application is assessed against the relevant provisions of the Council area Development Plan.

Planning policies have been inserted into the relevant Development Plans to enable Councils to make appropriate balanced decisions when considering applications for tree removal. Once the assessment is made the relevant authority can approve, approve with conditions, or refuse the proposed 'development' relating to the regulated tree.

Applications involving a regulated or significant tree are Category 1 for public notification purposes (i.e. no notice required). The exception is for regulated trees on Council land, where Council is the planning authority. In this case, Category 2 notification is required (i.e. written notice to neighbours and option of being heard by Council).

Area affected map



What if a land owner objects to a Council decision?

An applicant has the right to appeal to the Environment Resources and Development Court against a decision made, or a condition attached to an approval, by the planning authority. Such an appeal must be lodged with the Court within two months of the application decision being made.

What if urgent work is needed to make a tree safe?

In an emergency situation, work involving a regulated or significant tree can be undertaken without first having received a development approval (in most cases this work will be done by the State Emergency Service or Council). As soon as practicable after the emergency work is undertaken, the owner of the regulated or significant tree must lodge a development application with the Council for the work undertaken.

What are the penalties and remedies for non-compliance?

Breaches of the provisions relating to regulated trees will be enforced using existing provisions under the *Development Act 1993* that apply to all other types of development. Under the existing provisions, the person who undertakes the work to the regulated tree will be the person responsible for the breach. Fines of up to \$120,000 operate if breaches are proven.

Regulated Trees Development Plan Amendment

A Regulated Trees Development Plan Amendment (DPA) has been placed on interim operation. This DPA introduces to relevant Development Plans policy that guides assessment of development applications relating to regulated trees. In doing so it supports the amendments to the *Development Act 1993* and associated Regulations. Written representations on the Regulated Trees DPA can be submitted until Wednesday 25 January, 2012. For further information visit www.sa.gov.au/planning/dpas.

List of specific tree species exemptions

All trees located within 10 metres of an existing dwelling or existing inground- swimming pool, unless it is one of the two following species of trees:

- *Agonis flexuosa* (Willow Myrtle)
- *Eucalyptus* (any tree of the species)

Any of the following 24 listed tree species are also excluded from the controls:

- *Acer negundo* (Box Elder)
- *Acer saccharinum* (Silver Maple)
- *Ailanthus altissima* (Tree of heaven)
- *Alnus acuminata* subsp. *Glabrata* (Evergreen Alder)
- *Celtis australis* (European Nettle Tree)
- *Celtis sinensis* (Chinese Nettle Tree)
- *Cinnamomum camphora* (Camphor Laurel)
- *Cupressus macrocarpa* (Monterey Cypress)
- *Ficus* spp. (Figs), other than *Ficus macrophylla* (Moreton bay fig) located more than 15 metres from a dwelling
- *Fraxinus angustifolia* (Narrow-leaved Ash)
- *Fraxinus angustifolia* ssp. *Oxycarpa* (desert ash)
- *Lagunaria patersonia* (Norfolk Island Hibiscus)
- *Melaleuca styphelioides* (Prickly-leaved Paperback)
- *Pinus Radiata* (Radiata Pine / Monterey Pine)
- *Platanus x acerifolia* (London Plane)
- *Populus alba* (White poplar)
- *Populus nigra* var. *italica* (Lombardy Poplar)
- *Robinia pseudoacacia* (Black Locust)
- *Salix babylonica* (Weeping Willow)
- *Salix chilensis* 'Fastigiata' (Chilean Willow, Evergreen Willow, Pencil Willow)
- *Salix fragilis* (Crack Willow)
- *Salix X rubens* (White Crack Willow, Basket Willow)
- *Salix X sepulcralis* var. *chrysocoma* (Golden Weeping Willow)
- *Schinus areira* (Peppercorn Tree)

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www.sa.gov.au/planning/developmentapplications

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