



# Regulated and Significant Tree Damaging Activity Fact Sheet

## OVERVIEW

The *Development Act 1993* provides that damaging a 'regulated' or 'significant' tree is development and requires Development Approval from the Council. Dead trees or trees within 20 metres of an existing house in a bushfire prone area\* do not require Development Approval to be removed.

## WHAT IS A REGULATED TREE

A regulated tree is any tree in metropolitan Adelaide (which includes the Hills Face Zone) and/or any tree in the townships of the Adelaide Hills Council)

- with a trunk circumference of 2m or more, when measured at a point 1m above natural ground level, or
- in the case of a tree with multiple trunks, a tree that has trunks with a total circumference of 2m or more and an average trunk circumference of 625mm or more.

## WHAT IS A SIGNIFICANT TREE

A significant tree is any regulated tree in metropolitan Adelaide (which includes the Hills Face Zone) and/or any tree in the townships of the Adelaide Hills Council)

- with a trunk circumference of 3m or more; when measured at a point 1m above natural ground level, or
- in the case of a tree with multiple trunks, a tree that has trunks with a total circumference of 3m or more and an average trunk circumference of 625mm or more.

## WHAT IS A TREE DAMAGING ACTIVITY

Tree damaging activities include:

- Tree removal, killing or destruction,
- Tree lopping, ringbarking or topping,
- Severing of branches, limbs, stems or
- Any other substantial damage to a regulated or significant tree including its root system that would affect tree health.

It also includes any other act or activity that causes any of the aforementioned to occur, other than maintenance pruning (see below).

## WHAT ACTIVITIES AFFECTING REGULATED OR SIGNIFICANT TREES DO NOT REQUIRE DEVELOPMENT APPROVAL

- Maintenance pruning of less than 30% of a tree's crown is not controlled where the pruning is required to remove dead or diseased wood or, to remove branches that pose a risk to buildings or areas frequently used by people (refer to Australian Standard 4373-1996 'Pruning of Amenity Trees' on the SAI Global Limited website).

- Removal of dead trees, or trees within 20m of a house in a bushfire prone area.\*
- Removal of any tree included in the *Development Regulations 2008* species list as being exempt from regulated tree controls. The trees listed are:
  - *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* (Morton bay fig) located more than 15 metres from a dwelling
  - *Fraxinus angustifolia* (Narrow-leaved Ash)
  - *Fraxinus angustifolia ssp. Oxycarpa* (desert ash)
  - *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)

(These tree are limited to exotic species; and are trees considered to have a medium to high or risk of limb failure and infrastructure damage; and are common trees planted in urban areas).

- Trees planted in woodlots, orchards or other forms of plantation created for the purpose of growing or harvesting trees or any produce from them.
- The pruning and trimming of trees under or close to powerlines (An exemption has been given from these controls for activities under Part 5 of the *Electricity Act 1996*).
- The damage to or removal of, any tree that has been specified under chapter 8, Part 1 of the *Natural Resources Management Act 2004* (declared pest plants).

## **WHERE DO THE CONTROLS APPLY IN THE ADELAIDE HILLS COUNCIL AREA**

The *Development Act 1993* specifies the designated area within which controls for regulated and significant trees applies. The **designated area** in the Adelaide Hills Council includes the following areas (refer to the map at end of this fact sheet):

- Commercial Zone
- Country Living Zone
- District , Neighbourhood and Local Centre Zones
- Hills Face Zone
- Light Industry Zone
- Residential Zones

- State Heritage Area (Mount Torrens)
- Tourist Accommodation Zone
- Township Zones

The following zones are excluded from the designated area for Development Controls but note native trees may still be covered by the Native Vegetation Act and require clearance approval from the Native Vegetation Branch of the Department for Environment and Water:

- Extractive Industry Zone
- Public Purpose Zone
- Watershed (Primary Production Zone)

### **THE NATIVE VEGETATION ACT**

In South Australia, native vegetation (not exclusively trees) is protected by the *Native Vegetation Act 1991*. In most cases the clearance of native vegetation requires the consent of the Native Vegetation Council. Under this Act “clearance” may be interpreted as ‘damaging activity’.

The Regulations of the Native Vegetation Act list a number of exemptions where clearance of native vegetation does not require approval. A full list can be obtained from the Native Vegetation Council.

The following are some of the most commonly applicable exemptions:

- Clearance needed for the erection of an approved building or structure
- Clearance within 20 metres of a dwelling (except in relation to large trees [with a trunk circumference of 2m or more, measured 1m above the base of the tree] the clearance of which requires the support of the CFS)
- Clearance within 10 metres of a building
- Reasonable clearance of up to 5 metres in width on each side of a fence line for maintenance or construction purposes (excluding roadsides)
- Clearance for an access track for vehicles
- Clearance for a firebreak

### **ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999**

This Commonwealth piece of legislation serves to protect certain threatened ecosystems and species. Refer to the Act for species nominated for protection. Potential damage to any species of endangered trees or any vegetation that harbour a threatened animal, as listed in this Act, normally is not permissible.

### **WHO WILL ASSESS A DEVELOPMENT APPLICATION FOR TREE DAMAGING ACTIVITY**

In most cases the Council’s planning assessment staff will be responsible for assessing a development application for removal or pruning of a regulated/significant tree. To avoid unnecessary delay, refer to Council’s *Removing or Pruning a regulated/significant tree* checklist for a complete list of information to be submitted with your application.

### **HOW ARE APPLICATIONS ASSESSED**

The application is assessed against the relevant provisions of the Development Plan. The guidelines in the Development Plan seek to conserve regulated and significant trees that provide important

aesthetic and environmental benefit and to balance development with regulated and significant tree preservation where it is demonstrated that the tree(s):

- Contribute significantly to the character or visual amenity of the local area, and/or
- Are indigenous to the local area, and/or
- Are of a rare or endangered species, and/or
- Are an important habitat for native fauna.

Development should have minimal adverse effects on regulated trees and should not be removed or damaged unless it can be demonstrated that:

- The tree is diseased and its life expectancy is short
- The tree represents a material risk to public or private safety
- The tree is causing damage to a building
- Development that is reasonable and expected would not otherwise be possible
- The work is required for the removal of dead wood, treatment of disease or is in the general interests of the health of the tree

Where a significant tree demonstrates at least one of the following attributes it should be preserved:

- The tree makes an important contribution to the character or amenity of the local area; and/or
- The tree is indigenous to the local area and its species is listed under the *National Parks and Wildlife Act 1972* as a rare or endangered native species; and/or
- The tree represents an important habitat for native fauna; and/or
- The tree is a part of a wildlife corridor or a remnant area of native vegetation; and/or
- The tree is important to the maintenance of biodiversity in the local environment; and/or
- The tree forms a notable visual element to the landscape of the local area;

Development should be undertaken with the minimum adverse effect on the health of a significant tree and tree-damaging activity should not be undertaken unless:

(a) In the case of tree removal;

- the tree is diseased and its life expectancy is short; or
- the tree represents an unacceptable risk to public or private safety; or
- the tree is within 20 metres of a residential, tourist accommodation or habitable building and is a bushfire hazard within a Bushfire Prone Area; or

(b) The tree is shown to be causing or threatening to cause substantial damage to a substantial building or structure of value; and

(c) All other reasonable remedial treatments and measures have been determined to be ineffective.

(d) It is demonstrated that all reasonable alternative development options and design solutions have been considered to prevent substantial tree-damaging activity occurring.

(e) In any other case;

- the work is required for the removal of dead wood, treatment of disease, or is in the general interests of the health of the tree; or
- the work is required due to unacceptable risk to public or private safety; or
- the tree is within 20 metres of a residential, tourist accommodation or habitable building and is a bushfire hazard within bushfire prone area; or
- the tree is shown to be causing, or threatening to cause damage to a substantial building or structure of value; or
- the aesthetic appearance and structural integrity of the tree is maintained; or

- it is demonstrated that all reasonable alternative development options and design solutions have been considered to prevent substantial tree-damaging activities occurring.

Development involving ground work activities such as excavation, filling and sealing of surrounding surfaces (whether such work takes place on the site of a significant tree or otherwise) should only be undertaken where the aesthetic appearance, health and integrity of a significant tree, including its roots system, will not be adversely affected.

Land should not be divided or developed where the division or development would be likely to result in a substantial tree-damaging activity occurring to a significant tree.

Once the assessment is made, Council can either approve, approve with conditions, or refuse the proposed development.

Applications involving a regulated/significant tree do not require public notification unless the tree is on Council land and the Council is the Planning Authority. Where the proposal involves Council trees written notification is provided to the owners of adjacent land. .

### **REPLACEMENT TREES WHERE DEVELOPMENT APPROVAL IS REQUIRED**

Any development approval for the removal of trees is subject to a condition regarding replacement planting. This will require you to plant and maintain two (2) trees to replace every Regulated Tree and three (3) trees to replace every Significant Tree. Replacement trees cannot be planted within 10 metres of an existing dwelling or an existing in-ground swimming pool.

If there is no suitable location for you to plant replacement trees in accordance with the above criteria, or if you do not wish to plant replacement trees for whatever reason, the Council may allow you to pay money into its Urban Trees Fund at the rate of \$89.50\* for each replacement tree that is not planted. Money paid into the Urban Trees Fund is used by the Council to either:

- (a) maintain or plant trees which are or will (when fully grown) constitute significant trees; or
- (b) to purchase land in order to maintain or plant trees which are or will (when fully grown) constitute significant trees.

### **WHAT IF THE APPLICANT OBJECTS TO A DECISION**

An applicant has the right to appeal to the Environment Resources and Development Court against a decision made on regulated or significant trees, or to a condition attached to an approval. Such an appeal must be lodged with the Court within 2 months of the decision being made.

### **WHAT IF URGENT WORK IS NEEDED TO MAKE TREES SAFE**

In an emergency situation work involving a regulated tree or significant tree can be undertaken without first receiving 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 tree must lodge a development application with the Council for the work undertaken.

## **WHAT IF MY NEIGHBOUR'S REGULATED TREE IS ENCROACHING ON MY LAND**

Pruning back a regulated or significant tree that is encroaching on your property, either branches or roots, does not require development approval unless it is likely to affect the health and appearance of the tree and is more than maintenance pruning.

Where cutting back the tree would result in damage to the tree (including root damage) you will be required to seek a development approval from Council for any works on your side of the common property boundary.

For further information please contact the Legal Services Commission.

## **WHAT ARE THE PENALTIES AND REMEDIES FOR NON-COMPLIANCE?**

The removal of or, damage to, regulated and significant trees without the necessary Development Approval is a breach of the *Development Act 1993*. Breaches will be enforced by the Council in a similar manner to other unlawful development. Under the existing provisions of the Development Act 1993 a person who undertakes the work to the regulated tree will be the person responsible for the breach. Fines of up to \$120,000 may be applied by the Environment Resource & Development Court if breaches are proven.

## **PLEASE NOTE**

The information provided in this Fact Sheet is only intended to be a summary. All development applications are considered on their individual merits and therefore situations may vary.

### **Contact details**

Development & Regulatory Services  
Duty Planner  
(08) 8408 0400

### **Further information**

Adelaide Hills Council  
(08) 8408 0400  
[mail@ahc.sa.gov.au](mailto:mail@ahc.sa.gov.au)  
[ahc.sa.gov.au](http://ahc.sa.gov.au)  
PO Box 44  
Woodside SA 5244

### **Native Vegetation Council**

GPO Box 1047  
ADELAIDE SA 5001  
Phone: (08) 8303 9777  
[nvc@sa.gov.au](mailto:nvc@sa.gov.au)

### **Legal Services Commission**

Adelaide Office 159 Gawler Place  
Legal Help Line 1300 366 424

# REGULATED TREE ZONES

2011

SCALE 1 : 200 000

