

# Frequently Asked Questions



## Protecting Regulated and Significant Trees

A brief overview of the legislative controls in place to protect trees in metropolitan Adelaide and townships in the Adelaide Hills Council or parts of the Mount Barker Council.

### **Q – What is a regulated tree?**

**A** – The *Planning, Development and Infrastructure Act 2016* (the Act), *Planning, Development and Infrastructure (General) Regulations 2017* (the Regulations), and Planning and Design Code (the Code) provide that a ‘regulated tree’ is:

- Any tree within the Regulated and Significant Tree Overlay in the Code (see map below) with a trunk circumference of 1.0 metre or more measured at a point 1.0 metre above natural ground level (or in the case of trees with multiple trunks, it is those with trunks with a total circumference of 1.0 metre or more and an average circumference of 310 millimetres or more measured at a point 1.0 metre above natural ground level); or
- Any tree identified as a significant tree in Part 10 of the Code.

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### **Q – What is a significant tree?**

**A** – The Act and Regulations provide that a ‘significant tree’ is:

- A regulated tree with a trunk circumference of 2.0 metres or more measured at a point 1.0 metre above natural ground level (in the case of trees with multiple trunks, it is those with trunks with a total circumference of 2.0 metres or more and an average circumference of 625 millimetres or more measured at a point 1.0 metres above natural ground level); or
- Any tree identified as a significant tree in Part 10 of the Code.

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### **Q – What activities affecting regulated and significant trees are controlled?**

**A** – Subject to a number of exceptions, the Act provides that any activity that damages a ‘regulated tree’ is ‘development’ and as such, requires 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.

## **Q – What are the exceptions where development approval is not required?**

**A** – The requirement to obtain approval under the Act does not apply if:

- the activity being carried out is maintenance pruning that is not likely to adversely affect the general health and appearance of the tree;
- the activity being carried out does not remove more than 30% of the crown of the tree (and does not occur more than every 5 years) and 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 (it was held in *The City of Unley v Crichton & Anor* [2021] SASC 17 dead branches do not form part of the crown of a living tree);
- other than in relation to a State Heritage Place, to remove a tree if:
  - the tree is within 20 m of a dwelling in a Medium or High Bushfire Risk area within a Hazards (Bushfire Protection) Overlay in the Code;
  - the tree is dead;
  - the tree is on land under the care and control of the Minister who has primary responsibility for the environment and conservation in the State;
  - the tree is on land under the care and control of the Board of the Botanic Gardens and State Herbarium; or
  - the tree is on land on which development for the purposes of social infrastructure is being carried out by or on behalf of the Minister responsible for the administration of the *Highways Act 1926*, provided the Minister ensures either replacement trees are planted, or payment into a relevant tree fund occurs.
- the activity is being carried out under Part 5 of the *Electricity Act 1996* (relating to the cutting and trimming of trees around powerlines);
- the activity is being carried out in connection with an order under section 254 of the *Local Government Act 1999* (order to remove overgrown vegetation or trees); or
- other than in relation to a tree declared as a significant tree in the Code, to remove a tree if:
  - the tree is located within 3 m of an existing dwelling or an existing in-ground swimming pool (other than in relation to a Willow Myrtle, Eucalyptus, Angophora or Corymbia);
  - the tree’s species is listed in a notice from the Minister for Planning on the SA Planning Portal;
  - the tree belongs to a class of plants declared by the relevant Minister under Part 9, Division 1 of the *Landscape South Australia Act 2019* (declared pest plants);
  - the tree may not be cleared without the consent of the Native Vegetation Council under the *Native Vegetation Act 1991*; or
  - the tree has been planted as part of woodlots, orchards or other plantations created for the purposes of harvesting the trees or produce.

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## **Q – What is maintenance pruning?**

**A** – The Act and Regulations do not define or specify what may comprise maintenance pruning. It is, however, envisaged that the thinning of the crown of a tree or formative pruning of young trees in circumstances that would not adversely affect the general health and appearance of the tree would be appropriate to undertake without having obtained development approval.

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### **Q – Is my tree species exempt from the controls?**

**A** – The Minister has declared a range of tree species that are exempt from regulated tree protections. If your tree is one of these species, the regulated tree controls do not apply unless the tree is also identified as a significant tree in the Code. The species listed in the Minister’s declaration are primarily limited to:

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

The species declared to be exempt are located in the [Minister’s notice](#).

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### **Q – What if my neighbour’s regulated or significant tree is encroaching on my land?**

**A** – Pruning back a tree branch or branches (or a tree’s roots where necessary) that are encroaching on your property can occur without seeking approval, provided it:

- is considered maintenance pruning (see above); or
- removes no more than 30% of the crown of the tree (and does not occur more than every 5 years) and 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.

Where the pruning does not meet these requirements, you will be required to seek development approval for any works on your side of the property boundary.

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### **Q – When is approval required for pruning?**

**A** – Approval would be required in the following cases:

- where the pruning would remove more than 30% of a tree’s crown, would occur more than once every 5-years, or is not required to remove dead or diseased wood or to remove branches that pose a material risk to buildings or areas frequently used by people; or
  - any other type of pruning, other than maintenance pruning.
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### **Q – Do I need a report from an arborist to support my application to remove a regulated or significant tree?**

**A** – A relevant authority cannot request an applicant to provide an expert or technical report for assessment of an application to remove a regulated tree (that is not a significant tree), unless they consider that special circumstances apply.

A relevant authority may request an applicant to provide an expert or technical report to assist with assessment of an application to remove a significant tree.

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

**A** – If your application to remove a regulated or significant tree is approved, a condition will apply requiring that replacement trees are planted or that money be paid into a fund. You can elect which option you wish to undertake.

Replacement trees should not be planted within 3 metres of an existing dwelling or in-ground swimming pool and should not be one of the exempt tree species identified in the Minister's declaration.

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

**A** – As above, no approval is required to remove a dead tree.

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**Q – Where do the controls apply?**

**A** – The controls apply within the Regulated and Significant Tree Overlay in the Code. More detailed mapping of this Overlay can be found on the South Australian Property and Planning Atlas.

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 *Planning, Development and Infrastructure Act 2016* controls. Country areas will continue to be protected by the *Native Vegetation Act 1991*.

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**Q – Who assesses an application regarding a regulated or significant tree?**

**A** – The Assessment Manager of the relevant council is usually responsible for assessing a development application with respect to regulated and significant trees.

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**Q – What are the fees?**

**A** – Most development applications involving a regulated tree or trees will incur a fee. Fees are set out in the Planning, Development and Infrastructure (Fees) Notice (as varied from time to time) and are updated annually.

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**Q – How are applications assessed?**

**A** – A development application involving a regulated or significant tree must be lodged on the PlanSA portal, or at the principal office of the relevant authority (usually the council within which the tree is located). The application is assessed against the relevant provisions of the Code.

Planning policies have been included in the Code to enable authorities to make appropriate balanced decisions when considering applications for tree removal. Once the application is made, the relevant authority can approve, approve with conditions, or refuse the proposed 'development' relating to the regulated or significant tree.

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**Q – What if a land owner objects to a decision?**

**A** – An applicant has the right to appeal to the Environment, Resources and Development Court (the 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.

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

**A** – 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 a council). As soon as practicable after the emergency work is undertaken, the owner of the regulated or significant tree must lodge a development application for the work undertaken.

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**Q – What are the penalties and remedies for non-compliance?**

**A** – Breaches of the provisions relating to regulated or significant trees will be enforced using the provisions of the Act that apply to all other types of development. For the most part, the person who undertakes the work to the regulated or significant tree will be the person responsible for the breach, but the owner of the land where the tree is located may also be responsible. Fines of up to \$120,000 may apply if breaches are proven.

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