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Introduction - The problems with the existing system of tree protection:

Current planning laws for tree protection in South Australia are currently woefully inadequate and provide little protection for trees or native vegetation. There is plenty of evidence which indicates that South Australia has the worst tree protection laws of any state in Australia.

Developers are permitted almost unvetted right to clear trees and can disregard preservation or maintenance of the natural environment at little or no real cost to themselves.

This is completely at variance with stated environmental policy of most local Councils and often in direct opposition to community expectations and wishes.

Hence, we often hear and read of excellent aspirations, to maintain, enhance and expand tree canopy cover in council regions. The reality however is often quite different as there are considerable pressures brought to bear by financially well-prepared developers who often prefer to clear-fell any existing trees and vegetation on development sites and then build on a clear site. It is apparently considered by many developers that it would be too inconvenient to work with and incorporate existing trees on a site.

Further, tree plantings in development areas are not necessarily appropriate. They may be of some aesthetic value and may eventually provide some replacement tree canopy and limited shade, but they can never replicate a lost ecosystem and the replacement trees themselves may be of little value to the local flora and fauna which formerly inhabited the area. Tree hollows in eucalypts for instance may only form over a period of decades to hundreds of years before they provide usable habitat for birds, bats and possums. With the loss of traditional, natural forest cover, the restoration and creation of replacement “urban forest”, often in too close proximity to urban dwellings, is unlikely to ever be a suitable replacement.

There has been considerable debate regarding planting of trees, particularly in new housing precincts. Often developers and local councils favour rapid growing, exotic trees. In particular, “London Plane” (*Platanus* sp.) and “Ornamental Pear” (*Pyrus* sp.) are favoured, particularly as street trees. The reason for favouring these two species is claimed to be that they provide shade in summer and allow sunlight to penetrate in winter when their leaves have fallen. Also, these species are relatively easy to transplant, even at an advanced age, unlike many eucalypts. However, such exotic species provide very little food or habit for birds or remnant wildlife and may also ‘look out of place’.

There are proven advantages in having a green environment associated with residential areas. It increases the visual appeal of the area and aids the mental health of people. Such areas are measurably cooler during summer and are more environmentally sustainable with reduced need for power for cooling.

It could be argued that if land is subject to extensive clearing prior to building development that there should also be included an appropriate “offset planting” of native vegetation to compensate for what has been lost. Developers and local councils should under the guidance of suitable arborists or naturalists, establish urban woodlands and nature corridors, especially along existing creek lines. Such nature corridors and wildlife sanctuaries should not be subject to intrusion by roads, walkways, or bikeways, but be devoted wholly to wildlife. This matter becomes increasingly important as excessive land clearing tends to isolate bird and animal populations into “islands of wildlife” which once isolated, stand little chance of survival in the long term and leads to local extinction.

Currently any dead tree requires no application for its removal. This overlooks the fact that even when dead, such trees provide essential and irreplaceable habitat for birds, bats and possums. Removal of such trees removes valuable habitat.

On a related theme, land clearing for development can severely impact remnant native vegetation. Often this matter is overlooked by developers who have little training in such matters. However, there are numerous instances of rare native vegetation such as orchids being thoughtlessly destroyed in this manner. Hence the importance of having an appropriate fauna survey undertaken before development takes place in large scale land developments.

It is common knowledge that most local councils have limited funds to expend on challenging in court, developers who disregard environmental preservation orders. Thus, developers can often evade even having to make a token effort to save trees.

Such indifference to preservation of the environment shown by many housing developers is also a cynical contradiction of the advertisements they use to attract new residents to new, green-area housing estates, which supposedly show an appealing lifestyle, imbedded in a healthy environment of trees and hills.

Currently, there are few regulations applying to homeowners to maintain and be responsible for the health and wellbeing of trees which may have been growing on their property before their residence was built. Hence there are known instances of large, mature, residential trees being deliberately poisoned or abused, as they have been deemed by the homeowner to be an “inconvenience”.

Further, there is the potential for inappropriate links between developers and political parties. Developers who often yield powerful influence, may make donations to political parties and such donations currently do not need to be disclosed and could potentially influence government bodies. This area is undefined, yet it is expected that well financed, vested interests would clearly not want to see their operations complicated by any tightening of environmental protection laws.

There is evidence to show that our current laws relating to Regulated and Significant Trees are inappropriate, too narrow in their protections and subject to a raft of exceptions introduced in 2011. Hence the current laws are relatively easy to circumvent and provide minimal protection at best.

The current laws are open to abuse or misuse as a convenient way for landowners to arbitrarily remove trees on the pretext that they are too close to a dwelling or a bushfire hazard. Such tree

removal is generally unregulated and may be undertaken whether genuinely warranted or not. This area of The Act needs much greater scrutiny.

Developers can all too easily pay into various offset schemes or plant a token number of replacement trees to compensate for wholesale clearing and unwillingness to retain existing environment. Also, developers are likely to be financially able and equipped with advisors and lawyers, such that councils are often reluctant to pursue actions against them in court, even when there is a strong suspicion of wrongdoing.

Similarly, in relation to homeowners, excessive pruning, deliberate damage, and arbitrary removal of trees is often ignored by councils who frequently have neither the ability to investigate such acts nor the finances to take legal action against culprits. Currently a Significant or Regulated tree growing on private property can be legally pruned up to 30% of its canopy without any application to a local council. Such action is clearly open to abuse, either deliberate or accidental, and can compromise the long-term health of the tree.

Currently the tree pruning, and tree removal industry is loosely regulated. No specific qualifications are required to become an “arborist”. Yet such persons are frequently consulted prior to tree pruning or removal. It is suggested that with so many of our native and exotic trees being subject to removal as we face urban infill and housing expansion, that such a situation is unsatisfactory and requires a remedy.

The planning approval process for developments has been largely delegated to the state government for approval, especially for large building projects. Local councils are permitted very little input into the process and the residents of a region even less so.

Thus, large scale building projects such as the new housing estates currently being constructed around Mt. Barker, are being undertaken with very little opportunity given to local residents to have their views or opinions considered.

Similarly, large tracts of trees are regularly removed for major road construction by the Department of Infrastructure and Transport (DIT), without the residents of the area being consulted in any meaningful way and often not even informed till construction work is underway.

DIT in particular, may be singled out as a department which acts as a law to itself. It does not need to make application under the planning code to remove trees, and there is no meaningful provision for community input into the department’s actions. Efforts to communicate with DIT staff also becomes a frustrating exercise, as it may take this department weeks or even months to make a reply to an inquiry.

Pictures of current housing development around Mt. Barker



Adjacent to Dunn Rd. Mt. Barker.

Cleared site, prior to housing construction, devoid of trees with high density new housing in background



Adjacent to Dunn Rd. Mt. Barker.

Very high-density housing occupying most of housing block. No provision for garden, green space, or trees.



Aston Hills Estate. Mt. Barker.

New, concrete apartments occupying entire housing block with no space for tree planting.
Thus, no shade and heavily reliant on air conditioning.



Aston Hills Estate. Mt. Barker.
Bare, hot industrial looking streetscape with no provision for street trees



Aston Hills Estate. Mt. Barker.

Streetscape showing plantings of exotic street trees. Small front gardens of high-density housing leave no room for anything other than small vegetation. Not wildlife friendly!

Mt Barker Sports Centre. Case Study.

About 2019 a developer was assigned by Mt Barker council to build a sports centre on the outskirts of the town, on former, mostly cleared, farming land. This land however did contain several large, mature eucalypts which were regarded as locally important.

Rather than work with the existing trees on the land, the developer refused to replan access roads around the trees on the site. Thus, with council consent, three of the trees were cut down, leaving two remaining trees in the precinct. Holes were then dug adjacent to the remaining live trees and the dead trees were re-erected in these holes. The dead trees were retained in this fashion, supposedly to provide “habitat” for local wildlife!

Subsequently one of these “re-erected trees” collapsed during a storm. Also, one of the remaining live trees has subsequently died, possibly through Phytophthora disease, brought about by contaminated construction vehicles infecting the area.

Clearly, the trees in their former living condition would have provided better habitat!

This action caused outrage in the local community, but the protests achieved no result.

The best that the local council could undertake, was to carve out “chainsaw hollows” in the dead trees to provide some degree of habitat. A small, token, nature reserve has been established by the Mt Barker council arborist around these trees which act as a sad reminder of poor planning and indifference to the environment.



Springs Rd. Mt Barker.

Mt Barker's memorial to environmental indifference



Springs Rd Sports Centre. Mt Barker.
Showing a collapsed, former re-erected "habitat" tree



Springs Rd. Mt Barker Sports Centre.
Showing Collapsed “habitat tree” on left, re-erected dead tree on right and recently deceased eucalypt in background, possibly a victim of Phytophthora.

Probably all of these trees could have remained living and contributing to natural habitat, had it not been for the attitude of the developer and the Mt Barker council!

Recommendations:

The narrowly defined South Australian tree protection laws relating solely to tree circumference should be abandoned and the various exemptions also rescinded. The Act should be replaced by a system based on that as used in Victoria which protects vegetation through planning overlays. Thus, giving focus and attention to vegetation and canopy and affords greater protection to vegetation as a whole.

Local councils should be given much greater control over tree protection and in this be guided by local community demands and expectations. Currently tree protection laws have multiple exclusions, and the laws are rigid and often inappropriately applied to the detriment of the environment.

Tree protection laws should be rewritten in such a way that a strong case must be made to show why a tree should be removed or why it requires excessive pruning.

Ideally, a monetary value would be placed on any tree regardless of “significance”. A developer would then be expected to pay such cost for the removal of the tree into a fund for local environmental regeneration. If trees were valued at say \$1,000 per year of estimated age, then developers may be much more willing to work with the trees in their development area rather than arbitrarily removing them.

Developers should be required to work with the environment, so that trees are seen as an asset and valued as such and are incorporated within the development.

Planting of trees within a development area should be with appropriate species and in harmony with the area, its culture, heritage and wherever possible should be with endemic species which are better able to cope with the existing climate and soils.

This becomes especially important with global warming and with the expectation that our climate will become hotter and drier.

Establishment of urban forest and wildlife corridors should receive strong support and become a key expectation in all large-scale developments.

Before any large-scale land development occurs, there should be a requirement to undertake a professionally guided flora and fauna survey of the site. There should be an expectation that the developer will take all due care to preserve all areas of rare or exceptional vegetation and to ensure that local wildlife is not unduly interfered with.

Development applications should be overseen and within the jurisdiction of local councils rather than becoming the sole prerogative of state government.

Developers must be made more accountable to local councils and answerable to such councils for the way in which development occurs.

Arborists must be suitably trained and receive recognised qualifications.

In relation to pruning of environmentally important trees and removal of such trees, both on public and private land, this should only be undertaken with the approval of local council. Also, prior to such action, a qualified tree arborist should be required to submit a report to council regarding the necessity for any action.

Tree protections should be extended to dead trees and their habitat importance recognised.

Development Applications that have multiple previous iterations must have the previous iterations considered when making a final decision.

Developers should adhere to tree protection laws and not be permitted to make offset payments or token tree plantings in replacement of removal of environmentally important trees.

DIT must be made more accountable and subject to an open and transparent approval process prior to this department undertaking tree removals at any site.

Through local council action, homeowners should receive encouragement to be responsible for trees on their property.

A financial incentive scheme could be implemented, such that property owners receive free inspections and advice from an arborist regarding care and maintenance of their trees. Local councils could also consider making a rate rebate in recognition of maintenance of a locally important tree on a private property.

Homeowners should be made directly responsible for all trees on their property and assumed responsible for their continued health and welfare. This would overcome the problem of councils' having to investigate and try to prove neglect or damage to neighbourhood trees.

There should be education of the community to encourage tree and associated fauna awareness such that trees are seen as a valuable asset to the community in general.

Conclusion

The overall, fundamental message of this submission is that the general community should be re-empowered and considered to be the key stakeholder in all matters relating to development.

The wishes and expectations of the general community have become overlooked and sidelined by both state and local council, such that very often development is imposed without consultation, or due consideration of community wishes and aspirations.

A set of reinvigorated, honest, and robust tree protection laws for South Australia would give confidence to the community that the state government is taking environmental protection seriously.

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