PLANNING SYSTEM IMPLEMENTATION REVIEW

Submission to the Expert Panel

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Introduction

Dear Expert Review Panel,

For over 5 years now, I have been advocating for changes to South Australia's tree protections. In my opinion, it doesn't matter if you like trees or hate them, the current system is broken and fundamentally fails to prevent the unnecessary removal of large trees. This original intention of the significant tree protections was introduced in the late 1990s. Since 2019, I have been working with the Conservation Council of South Australia and their 'big trees' campaign. I've helped authored their reports regarding tree protections in Metropolitan Adelaide (MA) and have been lead author on their most recent reports including, "Comparison of Australia's Tree Laws" and "Tree Preservation and Bushfire Prevention: A Comparison of Australia's Bushfire Clearance Exemptions".

I like to think that these reports have changed the conversation around the need for better tree protection in metropolitan Adelaide. There is an urgent need for reform in this area. While the past few years have provided optimal growing conditions for tree canopy in MA, the long-term trend is not favourable to either meeting the current goals outlined in the 30-Year Plan for Greater Adelaide or more critically, mitigating the effects of climate change in our urban environment, of which trees will play such a critical and lifesaving role. For each area covered in my submission, I have included an evidence-based recommendation as to how the issue could be addressed and some case studies. You can click the recommendations to jump to them in the appendices.

It is fantastic to see that the expert panel is also looking at the overlap of Regulated and Significant Tree + Native Vegetation protections. This is an area that requires a detailed review in order to prevent the unnecessary loss of large trees, simplify protections and streamline assessment processes.

South Australia's tree protections must move to protecting the urban forest, not just large trees. Our interstate counterparts have already done this. With smaller block sizes, protecting large trees is critical but this also makes smaller trees more valuable than ever. Critically, our tree protections must meet the expectations of the local community and continuing to have a one-size-fits-all policy will never achieve this. Adelaide has the lowest percentage of public parks of all Australian capital cities. As a result, the focus must be on protecting trees on private land.

Finally, it is my understanding that an economic analysis will be undertaken on any proposed changes to South Australia's tree protection laws. Given the complexity of this area, the vast differences in land size, community expectations, development patterns and opportunities across MA, I struggle to see how this can be done at a level that produces quantifiable results. Potentially, the simplest way to conduct an economic analysis is to take examples from interstate Councils who have more ambitious tree protections in place and are still enabling economic development and the construction of new houses with higher levels of residential densities. The economic benefits of trees are undisputed even though it can be difficult to put precise monetary value on them.

It will be increasingly difficult to value the benefits of not implementing better protections for our urban forest. Trees do not establish themselves and grow overnight. Changes made now must be done with the understanding that their impacts will take 20+ years to start having a tangible impact. We cannot continue with short-term thinking and planning that will over time, erode Adelaide's greatest advantage – its liveability.

Tom Morrison

The One Key Takeaway

Given the length of this submission, I'd like to highlight at the beginning the one key takeaway I hope that the members of the Expert Review Panel leave with from reading this submission.

A one-size-fits-all policy approach to South Australia's tree protections does not work practically, politically and will always fail to meet the expectations of the local community.

For me, this is potentially the most important statement I can make. South Australia is the only state in the country where the protection of trees and vegetation are not delegated to local governments to decide on. There are several different issues with this.

1. Practically this doesn't work

   The average block size, development pattern and public open space across MA varies substantially in each council area. This means that some councils have a much greater need to protect trees on private land than others. There is no current system that allows for this. There are many different tree species that are native to specific parts of metropolitan Adelaide that will never reach a trunk circumference of 2m. This doesn't make those trees any less important. The Grey Box (Eucalyptus microcarpa) is a prime example of this. There is currently no way to protect the substantial majority of these trees that reside on private land.

2. Politically this doesn't work

   The protection of trees and vegetation is a political problem as much as it is a practical problem. Many MPs will get a significant amount of correspondence from local residents complaining why they cannot remove a tree in their backyard. Currently, the public perception is that all large trees are protected. Councils assess the applications to remove trees based on the rules set by the State Government. This results in members of the public blaming both councils and the State Government for slow assessment times and the perception of significant red tape in this area. Giving councils some level of control in this area makes the protection of trees a shared responsibility. This is critical for the long-term protection of our urban forest as it means that the protection for trees isn't just dependent on the mood of the current planning minister.

3. Failing to meet community expectations

   South Australia's current tree protections fail to meet the expectations of the local community. It doesn't matter if you like trees or hate them, the current system is broken. A one-size-fits-all approach fails to recognise the substantial community differences over what should be protected as a tree. Councils are a more accessible level of government and can both react quicker and tailor policies that meet what the local community demands in ways that the State Government cannot. Critically, councils are required to resource the current systems and processes in place for protecting trees. For some parts of Adelaide, putting in place better protections will be difficult if the elected members on a council do not support better resourcing. This is one of the primary reasons why the changes made in 2011 happened. Adelaide's tree protections should not be set at a level that is acceptable to those who are willing to put in the least amount of effort and resources. This is what is currently happening.

So, how do you resolve these three issues? It is quite clear with the State Government having taken control of the planning system in March last year, that handing controls over the protection of trees and vegetation to local councils is the last thing they want to do. There is however, the potential to allow councils a greater say while still fitting within the current planning system.

Vegetation Overlays

Since 1999, Victoria has used Vegetation Planning Overlays in their planning system. These allow councils to provide better protection to trees and vegetation in certain areas of their council. Often, these overlays are placed on top of the protections already set in place that protect trees based on trunk circumference, height etc.

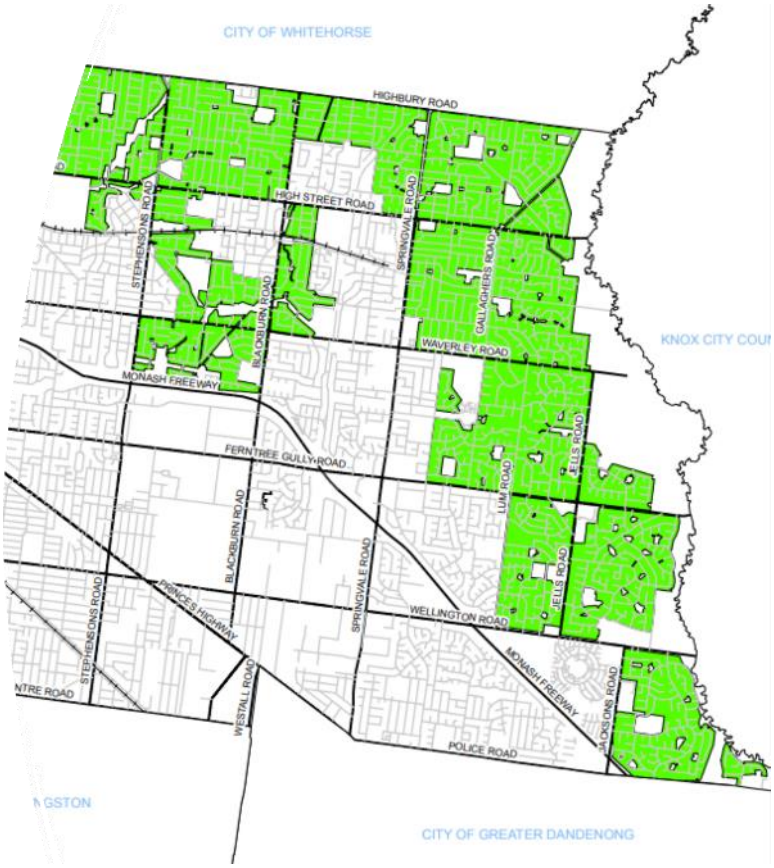


Figure 1 Vegetation Overlays applied across a Council in Victoria (areas highlighted in green)

A similar system is easily transferable across to South Australia's planning system with a few minor tweaks.

Through a Code Amendment Process (CAP), Councils would be able to provide greater protection to trees and vegetation in a similar way to how the Technical and Numerical Variations allow for different block sizes depending on the Council area. The CAP would require:

- Councils to get support from the public for such a Code Amendment,
- Undertake an economic analysis (if required)
- Be willing to resource the increased levels of protections
- Get final approval from the State Planning Commission

In a sense, such a process would solve all three issues I've highlighted above in relation to South Australia's current tree protections. **Critically, while Councils could pursue greater protections through a Code Amendment, the State Government would still set a minimum level of protection for trees and vegetation.** The detail of what vegetation would be protected would be included through the Technical and Numerical Variations like is current practice for determining minimum block sizes. Please see Case Study 11 for more detailed information on this Recommendation.

Responses to the Expert Panel's Questions

Native Vegetation

1. What are the issues being experienced in the interface between the removal of regulated trees and native vegetation?

This is a complex question as there are a number of different situations when it comes to the overlap of regulated trees (RT) and native vegetation (NV). Critically, this depends on if the land in question is also subject to a Bushfire Hazard Overlay. The introduction of the PDC saw a requirement introduced that development applications in an area covered by a Native Vegetation Overlay would be accompanied by a declaration that there would / would not be any clearance of Native Vegetation.

This requirement has improved the current system. However, in many situations, this requirement is sadly redundant due to existing exemptions that exist in both the NV and RT protections. Blocks of land ready for redevelopment / subdivision can be cleared of any vegetation using an existing house and neighbouring properties. The application for development can then be submitted with no native vegetation present on the block of land.

One of the largest issues with the overlap of RT and NV is what is defined under the Native Vegetation Act 1991 as 'native'.

> ***native vegetation*** means a plant or plants of a species indigenous to South Australia including a plant or plants growing in or under waters of the sea but does not include—
>
> (a) a plant or part of a plant that is dead unless the plant, or part of the plant, is of a class declared by regulation to be included in this definition; or
>
> (b) a plant intentionally sown or planted by a person unless the plant was sown or planted—

Figure 2 - Definition of Native Vegetation

This definition opens the door to allowing homeowners to choose the exemption that best works for them given the situation. In many situations, it is impossible to definitively prove if the tree in question has been planted or is naturally sown. This is particularly problematic in bushfire prone areas given the exemptions in place. Any RT within 20m of a dwelling can be cleared. Alternatively, for NV, any tree within 10m of a building can be cleared. Notice the critical difference between dwelling and building.

One aspect of this area that is often overlooked, is the approval process for determining if a large native tree can be removed. This adds additional confusion for property owners due to the unnecessary complexity. Councils are seen as having the primary responsibility regarding the management of trees and vegetation. The decision making regarding large native trees however, is split between the CFS and Native Vegetation Branch, with the current process causing unnecessary duplication and delays. The following processes should be given consideration and are included in the work done with the Conservation Council, as part of their new bushfire comparison report.

Option 1 – Request to remove tree due to it potentially being a bushfire risk

CFS to provide training to Council arborists / Bushfire Prevention Officers to be able to determine if a tree is a bushfire risk >>>> Council performs the assessment

Option 2 – Request to remove tree due to it potentially posing a safety risk

Trees are assessed using a similar pathway to that of a regulated tree for safety issues >>>> Council performs the assessment

Option 3 – Request to remove tree for development / other reason

Application is submitted to Council. Council directs homeowner to contact a qualified Native Vegetation Consultant >>>> Consultant performs SEB offset assessment / current Native Vegetation process

Three clear pathways that should result in greater efficiencies to the approval process, benefiting both applicants and assessment bodies.

>>> Recommendation 2, Recommendation 4, Recommendation 5, Recommendation 8

>>> Case Study 1, Case Study 2, Case Study 3, Case Study 4

2. Are there any other issues connecting native vegetation and planning policy?

Fundamentally, there are many exemptions included in NV that were designed for rural properties and might make some logical sense in a primary production situation but do not make any sense when applied to the peri-urban interface.

There needs to be some level differentiation in *Native Vegetation Regulations 2017* (NVR) between areas in a peri-urban environment and those that have a primary production zoning. Interstate, this is a frequent occurrence with their regulations making specific reference to planning zones. There is precedence of this already here in South Australia, as the 10m asset protection rule does not apply to buildings located in the River Murray Floodplain.

Particularly for the peri-urban area though, there is a more fundamental reason why a blanket 10m asset protection rule should not exist. It is making development more expensive and harder. Development within 10m of large trees / vegetation will require the homeowner to pay an SEB offset, regardless of if the homeowner intends to remove those trees. This can add significant cost to the overall proposed development and is not something that any bank is willing to lend additional money for. Furthermore, because of the 10m rule, applicants who are applying to remove a tree within 10m of a building, will be granted approval nearly regardless of the situation and if the tree could realistically be retained. Block sizes in the peri-urban area are simply not large enough to accommodate large trees if approval for removal is nearly guaranteed for anything within 10m.

>>> Case Study 5, Case Study 6

Compliance regarding the illegal removal of large native trees is nearly non-existent and very difficult to enforce. This is for three primary reasons:

1. The Native Vegetation Branch is significantly under resourced and other legally complex issues that I won't mention in this public submission

2. Lack of knowledge from the general public that compliance issues for native vegetation aren't the responsibility of the local council (unlike regulated trees)
3. Councils aren't enabled as an Authorised Officer under the *Native Vegetation Act 1991*

Currently, the Native Vegetation Branch is not in a position to make a site visit at the time an illegal tree removal maybe occurring to issue a 'stop work'. Councils however, tend to have a number of compliance officers on the ground and can respond within an hour. Significant consideration should be given to providing willing Councils the ability to issue 'stop work' notices in situations where breaches of the NV protections might exist.

Tree Canopy

1. What are the implications of master planned/greenfield development areas also being required to ensure at least one (1) tree is planted per new dwelling, in addition to the existing provision of public reserves/parks?

I like the idea of this, although it should be considered with the required densities for the master planned / greenfield development (MPGD). It has never made much sense to me why most new MPGD, particularly on the urban fringe, continue to have detached houses where you can clean your neighbours' gutters. This seems like a massive waste of space and time. You do not get a level of density that makes it economical to provide public transport etc, but you do apparently retain the 'Australian Dream'? In this situation, requirements for tree planting should be required. Row dwellings / apartments should have shared public space with different planting requirements.

Consideration should also be given to applying the Urban Tree Canopy overlay requirements to homeowners undertaking a renovation / extension. There has been significant tree canopy loss in many of the more desirable and established suburbs as trees are lost for a swimming pool / extension.

2. If this policy was introduced, what are your thoughts relating to the potential requirement to plant a tree to the rear of a dwelling site as an option?

I really like this. Significant guidance should be provided to homeowners / developer as to what type of trees should be planted. There are a lot of good trees that could be planted. This should allow tree canopy and shade provided by the council tree at the front of the dwelling, along with additional tree canopy at the back of the property. Right tree, right location is clearly critical.

>>> Recommendation 11

Tree Protections

1. What are the implications of reducing the minimum circumference for regulated and significant tree protections?

This would bring us closer to where every other place in Australia, that has tree protections on private land currently stands. I've got no doubt that there will be substantial pushback on reducing the trunk circumference by particularly influential groups. I think it is important to take a look at the report done by the University of Adelaide (UAR), "Urban tree protection in Australia: Review of regulatory matters". This report looked at 101 LGA's across Australia and provided some very insightful statistics around tree protections. Here are some key facts from the councils that used trunk circumference to protect trees:

- Only one Council protected trees at 140cm (the largest trunk circumference required)
- 95% of councils protected trees with a circumference of 100cm or less
- 78% of councils protected trees with a circumference of 50cm or less

I've looked hard and fail to see any significant media coverage interstate of development grinding to a halt as a result. The intention of these protections is to stop the wholesale block clearing that we see going on across MA. This allows for the retention of every substantial bit of greenery so that when an application is submitted to council, there is some haggle room over what should be retained and what is not. The focus across Australia has turned to protecting the urban forest, not just large trees.

Clearly, protecting trees of a smaller trunk circumference will have considerable impacts on resourcing if an arborist report is required for each tree that is proposed to be removed. It is critical to note that arborists reports are not always required interstate. **I suggest that different criteria for what triggers a referral to an arborist are introduced here in SA if the trunk circumference requirements are dropped.** Please see the recommendations below for additional information on how this could be resourced and proposed criteria.

Socially, setting a trunk circumference for protected trees that applies across all of MA + Mount Barker is politically and practically tricky. A detailed analysis of the LGAs assessed in the UAR shows that LGAs with a higher residential density protected trees of a smaller trunk circumference.

Should the criteria for what defines a regulated tree be changed to include a smaller trunk circumference or height-based protections etc, then the qualitative retention tests need to be revised. Otherwise changing this definition would fail to protect additional trees, leaving their protection at the same level they currently receive (none) and relying on the property owner to not put in an application for removal.

>>> Recommendation 6, Recommendation 9

2. What are the implications of introducing a height protection threshold, to assist in meeting canopy targets?

The UAR highlights that protecting trees based off their height is the most common method interstate for protecting trees. Using a height-based protection is logical and relatively easy to enforce. The LiDAR scanning undertaken by the State Government automatically provides the height of specific trees. Many trees across MA will rarely achieve a trunk circumference of 2m. Grey box and Lemon-Scented gums are prime examples of this. Just because a tree doesn't have a large trunk circumference, doesn't make it any less valuable. Once again, moving the protect the urban forest is critical. Exemptions should be considered for tree species such as palms. You do not want unnecessary red tape in this area. Most council's interstate that protect trees based off their height exempt palm trees.

>>> Recommendation 6

3. What are the implications of introducing a crown spread protection, to assist in meeting canopy targets?

Trees are assessed on their individual merits here in South Australia. No consideration is given for the canopy that they provide despite shade being one of the most significant benefits that trees provide in the urban environment. Government assesses 'success' in this area by looking for an

increase in tree canopy cover. There is clearly a mismatch here between the objectives being set by the State Government and the protections in place for trees.

Tree canopy can be difficult to measure but should not be ruled out as an option to protect trees. I would find it unlikely that trees protected through a tree canopy requirement would not meet a protection for trees set based on their height which is potentially easier to measure.

Assessing trees based off their tree canopy could come into play for areas with low-level tree canopy coverage.

>>> Recommendation 6

4. What are the implications of introducing species-based tree protections?

I really think South Australia should stay away from species-based protections at a state-wide level. Per council, you could implement something that would work in this space and meet the expectations of the local community. It can be difficult to correctly identify a tree species, with sometimes even well-qualified arborists making mistakes.

>>> Case Study 7

Distance from Development

1. Currently you can remove a protected tree (excluding Agonis flexuosa (Willow Myrtle) or Eucalyptus (any tree of the genus) if it is within ten (10) metres of a dwelling or swimming pool. What are the implications of reducing this distance?

Significantly more trees are protected from unnecessary and automatic removal. The UAR has more interesting statistics regarding proximity-based exemptions.

- Only around 21% of the 101 councils allow protected trees to be removed based on their proximity to a dwelling
    - The average distance was 3m
- 78% didn't have any blanket exemptions in place

These two points show just how behind we are when it comes to the protection of trees. Once again, it is important to note the arborist requirements here. Recommendation 9 as highlighted before has more information on how to handle this.

I think it is important to note that the 10m Rule isn't the only proximity-based exemption for regulated trees here in SA. The 20m rule where any tree can be removed within 20m of a dwelling in a medium – high bushfire area is similarly destructive. As highlighted earlier, there is no logical reason for maintaining this exemption in its current form. No other state in Australia allows for 20m of tree clearance when it comes to bushfire mitigation.

At the end of the day, proximity-based exemptions are never used for the intended purpose that they were introduced for. They are a lazy way of reducing red-tape and application processing times. The trade-off for this is that we will continue to lose trees unnecessarily and continue to see substantial community angst.

>>> Recommendation 1, Recommendation 2
>>> Case Study 8, Case Study 9, Case Study 10

2. What are the implications of revising the circumstances when it would be permissible to permit a protected tree to be removed (i.e. not only when it is within the proximity of a major structure, and/or poses a threat to safety and/or infrastructure)?

There are already sufficient provisions within the current regulated / significant tree protections that allow for the removal of trees if they are causing structural damage or pose a threat to safety. I do not see and haven't heard any reason why this needs to be changed. I've spoken with a lot of arborists over the past 5 years and not one has raised the fact that it is too hard to remove a tree that poses a safety risk.

You already see with the blanket exemptions in place, the often-unwarranted hysteria behind the removal of some trees. Common sense should prevail when it comes to managing trees. A 2019 report from Arboriculture Australia found that the risk of being killed by a tree is 1 in 5,000,000. The risk of being killed by a tree while inside your house is 1 in 189,000,000.

So how does this compare to other common risks in our society? The risk of dying from:

- A melanoma – 1 in 13,500 (AIHW 2017b)
- Driving – 1 in 20,000 (BITRE 2017)
- Being murdered – 1 in 100,000 (Australian Institute of Criminology 2017)
- Falling off a chair – 1 in 1,000,000 (ABS 2013)

The chance of being struck by lightning is 1 in 12,000. For those that lie in bed worrying about the tree that may kill them as they sleep, should be aware that they are 450 times more likely to die from falling out of that bed than by a tree (ABS 2013).

Urban Tree Canopy Offset Scheme

1. What are the implications of increasing the fee for payment into the Off-set scheme?

Councils might be able to do something useful! It isn't a secret that the introduction of an off-set fund for the Urban Tree Canopy Offset Scheme (UTCOS) was widely opposed at the time. There was certainly substantial condemnation regarding the extremely low rates to be paid into the offset fund. I'm yet to see a tree with a height of 4m that provides decent canopy.

I fully support increasing the fees for this scheme. It should be noted however, that while this will push more people to 'planting' a tree, that this there is no compliance to make sure trees are planted and maintained. I was surprised to read in the discussion papers that only 5% of approvals have decided to pay an offset rather than plant a tree. While I understand it might be out of the scope of this review, I believe it would be worthwhile doing a random check of the other 183 applications that opted to plant a tree, to see if that tree was planted and still alive.

>>> Recommendation 11

2. If the fee was increased, what are your thoughts about aligning the fee with the actual cost to a council of delivering (and maintaining) a tree, noting that this would result in differing costs in different locations?

Very happy to support this. It is getting increasingly costly for some councils to plant trees, given that they are running out of room and must contest with numerous utilities and higher residential densities.

3. What are the implications of increasing the off-set fees for the removal or regulated or significant trees?

This is another logical step to improving South Australia's regulated tree protections. Currently, it is always cheaper to try and remove the protected tree than design around it or spend additional funds retaining it. Given the already weak level of protection in place, our declining canopy should not come as a surprise.

Critically though, this continues to support the view of developers and some members of the community that they will always be able to get approval to remove the tree. This needs to change and fast. The opposite is the case interstate where residents accept the tree is protected and adapt accordingly.

There is certainly the chance that these fees could be passed directly onto homeowners. However, if set appropriately, it should incentivise the retention of the tree in the first place. There is a fine balance to be achieved here. It should be noted that there are minimal examples interstate of where monetary values are applied to the removal of trees on private land. Should this be adopted here in South Australia and trees of a much smaller trunk circumference be protected, consideration should be given to kicking a monetary value only for larger trees and not each one. The SEB offset mechanism currently established for the removal of native vegetation could provide a starting point for this. Personally, I believe the SEB offset fund amounts are still too low. Earlier this year, the ACT Government passed their new Urban Forest Bill. In this, they setup a 'Canopy Contribution Framework' where if the planting of new trees is not possible, a financial contribution – determined by a tree valuation formula – will be used instead. Given how new this bill is, it is too early to say if this will be effective.

>>> Recommendation 12

Appendices

Priorities and Recommendations for Reform

The following part of my submission includes the recommendations highlighted above in response to the Expert Panel's questions and additional areas of focus that should be considered. These recommendations have been put together with the assistance of private industry arborists, council arborists, planners, environmental lawyers and other experts in this area. Most of them have been included in the reports done by Conservation SA.

Priority #1 - Remove exemptions from existing Regulated / Significant Tree Protections and Native Vegetation Regulations

In 2011, a number of exemptions were introduced to the protections for regulated and significant trees substantially weakening their protections and undermining the original intention of tree protections here in South Australia - preventing unnecessary removals without hindering development.

The Native Vegetation Act 1991 (NVA) covers large areas of metropolitan Adelaide, in particular some of our leafiest suburbs. The exemptions contained in the Native Vegetation Regulations 2017 (NVR), whilst making some sense for the rural areas in which the NVA applies, become problematic in the peri-urban environment.

10 Metre Exemption

Planning Development and Infrastructure (General) Regulations 2017

The 10 metre exemption is preventing development, with councils unwilling to approve development that might occur within 10 metres of a large tree. This exemption is a primary cause of the wholesale corner to corner block clearing that occurs for development across metropolitan Adelaide. Critically, there are no checks and balances to assess that the tree is causing damage to an asset of value before it is removed.

This exemption applies across neighbouring properties, meaning that the tree and the asset need not be on the same property and allowing me, for instance, to use your pool to remove my tree, despite the fact that you might actually quite like the tree and it is not damaging your pool. This can result in a breakdown in relationships between neighbours.

The exemption of Agonis flexuosa is illogical as, typically, species of this tree meet none of the requirements for retention if assessed for removal. The City of Mitcham, for instance, has never rejected an application to remove an Agonis flexuosa. Additionally, this species is native to Western Australia.

Other common species such as Angophoras and Corymbia aren't protected despite being until relatively recently part of the Eucalypt family.

*Recommendation 1: **Remove this exemption***

20 Metre Exemption

Planning Development and Infrastructure (General) Regulations 2017

This exemption is decimating tree canopy in some of metropolitan Adelaide's greenest suburbs. While the intention of this exemption is of critical importance, there are no checks and balances to ensure that the tree being removed constitutes a bushfire threat. Like the 10m rule, this exemption also applies across neighbouring properties.

Prior to its introduction in 2011, the CFS did not support this exemption being added. This is because large trees typically do not present a bushfire risk.

In many cases, the 20 metre exemption has resulted in homeowners increasing bushfire risk by allowing large trees to be removed and consequently enabling homeowners to increase plantings immediately adjacent to their homes. Evidence shows that these large trees can play a role in preventing ember attacks and reducing wind speed.

It is a common occurrence to see trees that were around before European settlement being removed for solar panels or because they make a mess. The 20m rule also facilitates higher density development in bushfire risk areas. Developers can take an existing house (or the neighbouring property) and clear anything within 20m, allowing for easier development. This was not the intention of this exemption.

Recommendation 2: Remove this exemption and replace with Priority #4 - Bushfire Attack Level Based Clearances

Tree Species Exemptions

Planning Development and Infrastructure (General) Regulations 2017

Many of these are common trees found in suburban backyards and streets and make a significant contribution to the urban tree canopy, cooling our suburbs. Further research is needed on climate resilient species suited to our changing climate.

Where other jurisdictions have exemptions lists, these lists typically only include weed species and pest plants.

Recommendation 3: Review and modify this to better reflect the South Australian environment. It should better protect non-weed species that contribute to our tree canopy.

Native Vegetation Regulations - 10 Metre Exemption

Native Vegetation Regulations 2017 (SA), Schedule 1, Part 1, Division 1, 1(1)

The NVR currently allow for the removal of any large tree within 10 metres of a house, farm building, office, shop, warehouse, farm shed, garage, or garden shed. The Native Vegetation Overlay in the Code covers large areas of metropolitan Adelaide.

The interaction between the NVR and the PDI Regulations covering regulated and significant trees not only adds confusion for homeowners, but gives less protection for native vegetation. This is because the Native Vegetation 10 Metre exemption applies to buildings, not just dwellings. Like the 20 Metre Rule, this exemption allows for the indiscriminate removal of large native trees.

There are many parts of greater Adelaide that are covered by both regulated tree protections and native vegetation regulations. Despite large native eucalypts being offered protection under the regulated tree laws, these protections are overridden by this exemption in the Native Vegetation Regulations, meaning that native vegetation in this situation is offered less protection.

Further, the NVR only applies to vegetation that is endemic (native to the local area) and has not been planted. This adds another level of confusion for homeowners and for the unethical, an opportunity to exploit the exemptions included in the regulated tree regulations to remove a tree. This is particularly apparent with the 20 metre rule commonly being exploited to remove native trees.

Recommendation 4: Remove this exemption and replace with: Priority #4 - Bushfire Attack Level Based Clearances

Native Vegetation Regulations – 5m Fence Exemption

Native Vegetation Regulations 2017 (SA), Schedule 1, Part 2, Division 1, 17(2)

The NVR currently allow for the removal of large trees within five metres of a fence line.

This exemption is intended to allow farmers to maintain fuel breaks around their fences. However, it is being used in metropolitan Adelaide to remove large trees without the need for approval. There are no checks and balances to guarantee that clearance is being undertaken for the intended purpose.

*Recommendation 5: **Remove this exemption and replace with: Recommendation #7 - Bushfire Attack Level Based Clearances***

Priority #2 - Defining a Regulated Tree

Planning, Development and Infrastructure Act 2016 (SA) section 3 (1) and Planning, Development and Infrastructure (General) Regulations 2017 (SA), Regulation 3F (1), (2),(3)

While South Australia's tree laws have always focused on protecting individual large trees, interstate attention has turned to protecting the "urban forest".

Defining a regulated / significant tree by the circumference of its trunk is a crude way of assessing which trees should be protected under law. This not only results in a loss of individual trees that could be substantial contributors to our future urban forest but also fails to recognise those species that may never reach a trunk circumference of 2m or more but which are still ecologically important.

Trees that provide substantial canopy can be unnecessarily cut down under the current definitions which do not align with the goals set by State Government / Councils and which are primarily aimed at preserving and expanding tree canopy.

Many other jurisdictions across Australia with laws to protect the urban forest, use not only trunk circumference to define a protected tree, but also take height and sometimes canopy size into account.

Recommendation #6:

As recommended by the 'Urban tree protection in Australia report' from the University of Adelaide, change the definition of a regulated tree to one that:

- *Has a trunk circumference of 50cm or more measured 1m above the ground*
- *Or has a height of 6m or more*
- *Or has canopy of over 9sqm*

Significant Trees could then be defined as:

- *Has a trunk circumference of 150cm or more measured 1m above the ground*
- *Or has a height of 10m or more*
- *Or has a canopy of over 13sqm*

For trees that are defined as Native Under the Native Vegetation Regulations 2017:

- *Being 5m or more in height AND*
- *Having a trunk circumference of 30cm or more measured at 1m above the ground*

Due to the shortage of arborists, the following is proposed:

- Regulated trees would not require an arborist report for removal
    - Their applications would be managed by Council
- Significant trees would still require an arborist report for removal

Additionally, should the criteria above be adopted, then the qualitative retention tests (outlined in PO1.1 and 1.2 of the Regulated and Significant Tree Overlay) must change. Keeping these tests and changing the definition of a regulated tree will see really no additional substantive protection provided to these trees than already exists. Putting an application into your local council is not much of a disincentive. As a result, the following is proposed:

A tree damaging activity to a Regulated Trees will only occur to:

- Remove a diseased tree where its life expectancy is short
- Mitigate an unacceptable risk to public or private safety due to limb drop or the like
- Rectify or prevent extensive damage to a building of value
- Treat disease or otherwise in the general interests of the health of the tree and / or
- Maintain the aesthetic appearance and structural integrity of the tree
- **Development of the land that is reasonable in accordance with the relevant zone or subzone would not otherwise be possible**

Regulated trees will not be assessed against the qualitative retention criteria. Essentially, unless the tree needs to go for development or it is a risk, then it should stay. As a general point, it is unclear why trees are required to prove that they provide benefits to be retained – all trees provide benefits. For significant trees, the proposed assessment is slightly different.

A tree damaging activity for a Significant Tree will only occur to:

- Remove a diseased tree where its life expectancy is short
- Mitigate an unacceptable risk to public or private safety due to limb drop or the like
- Rectify or prevent extensive damage to a building of value
- Treat disease or otherwise in the general interests of the health of the tree and / or
- Maintain the aesthetic appearance and structural integrity of the tree

- Development of the land that is reasonable in accordance with the relevant zone or subzone would not otherwise be possible **unless**

The significant tree makes:

- An important contribution to the character or amenity of the local area
- Is indigenous to the local area
- Represents important habitat for native fauna
- Forms part of a wildlife corridor of remnant native vegetation
- Are important to maintaining the biodiversity in the local environment and / or
- Forms a notable visual element to the landscape of the local area

Essentially, should a significant tree be proposed to be removed for a development, if it meets one of the above criteria, then it should be retained. Development that is reasonable and expected should be required to maintain and work around the tree in these situations.

Priority #3 - Vegetation Overlays

South Australia has a one-size-fits-all approach to tree protections unlike our interstate counterparts, where Councils are responsible for determining which trees and vegetation are protected.

While the South Australian approach allows for a consistent set of rules across the metropolitan area, it fails to respond to the expectations of the local community, doesn't take into account local tree species and means that areas with less canopy are unable to choose to better safeguard their existing canopy through stronger protections.

Interstate jurisdictions set rules for the protection of trees and vegetation to meet the expectations of the local community. Greener jurisdictions have stronger protections in place, sometimes with specific protections for endemic species. Community appreciation of trees appears to have played a key role in allowing some councils to push for greater protections. LGAs in Victoria utilise planning overlays to provide greater levels of protection within each council area.

Recommendation #7 – Add Vegetation Overlays into the Planning and Design Code.

Consideration should be given to the creation and application of additional Vegetation overlays in the Planning and Design Code to provide greater protections for areas of important biodiversity and to align the protection of trees with community expectations. The Victorian planning model should be used as a point of reference. This approach should be considered here for South Australia, with the State Government setting a minimum benchmark for tree protection and then supporting a Code Amendment to enable Councils to apply the most relevant overlays to their local area.

Vegetation Overlays would link into the Code in a similar way to that of the existing overlay system and could potentially borrow some aspects from the Technical and Numerical Variations – See Case Study 11.

Priority #4 - Bushfire Attack Level Clearance Allowances

Bushfire mitigation is an essential element of Australian life but it is abundantly clear that in South Australia, large trees have become easy casualties in its pursuit, even though in a significant majority of situations, they do not contribute to bushfire risk. South Australia's current bushfire clearance allowances are riddled with contradictions, have confusing overlap and can cause adverse environmental impacts. The result of this allows for Adelaide's greenest suburbs to be denuded of trees. It is hard to imagine this was a deliberate policy intention. The following recommendation was detailed in the latest Conservation SA report, with support from both the CFS and Native Vegetation Council.

The intention is that for the peri-urban areas of Adelaide, the 20m PDI Rule, 20m NVR Rule, 10m NVR Rule and 5m NVR Rule are replaced with the following system.

No other state in Australia allows for 20m of tree clearance under the guise of bushfire mitigation. Whilst bringing South Australia's clearance exemptions in line with New South Wales, Victoria and Western Australia would significantly reduce the clearance potential, a clearance allowance of 10m for trees, would still allow for nearly all trees in many peri-urban areas to be removed.

Speaking with interstate and local experts, there is little supporting evidence that in the vast majority of situations, removing large trees within 10m of a dwelling / building will assist bushfire mitigation.

The current clearance allowances read as a de facto directive to remove trees within this zone. At the very least, they suggest that having trees within this zone is in and of itself dangerous.

Furthermore, once large trees are removed, they are often replaced with fine fuels. This results in increased danger initially through the lack of big trees around the house to both reduce and slow the fire and then through the replacement of these big trees with fine fuels which often take the fire right up to the house. This is highly problematic: homeowners feel that their house is more secure but it is often more vulnerable.

Recommendation #8 - *When building in an area subject to a Hazards (Bushfire Protection) Overlay in the Planning and Design Code (PDC), homeowners are required to obtain a Bushfire Attack Level (BAL) rating. The BAL takes into account factors such as Fire Danger Index, the slope of the land and the vegetation around the property. BALs are determined using Australian Standard AS 3959.*

Clearance allowances should be based on the Bushfire Attack Level of the property.

This assessment not only allows for a more evidence-based and holistic approach but also provides a crucial opportunity to educate homeowners about what constitutes a bushfire risk. Clearance allowances should be evidence based. When building in an area subject to a Hazards (Bushfire Protection) Overlay in the PDC, homeowners are required to obtain a Bushfire Attack Level (BAL).

The BAL takes into account factors such as Fire Danger Index, the slope of the land and the vegetation around the property. BALs are determined using Australian Standard AS 3959 - Construction of buildings in bushfire-prone areas (AS 3959).

In South Australia, the Ministerial Building Standard MBS 008 - Designated bushfire prone areas - additional requirements, outlines the application of BALs. BALs are determined to apply as follows:

A. Within areas identified as Bushfire - General Risk in a Hazard Overlay to the PDC – BAL Low.
B. Within areas identified as Bushfire – Medium Risk in a Hazard Overlay to the PDC – BAL 12.5.

C. Within areas identified as Bushfire – High Risk in a Hazard Overlay to the PDC relevant BAL for the site identified by a site assessment carried out in accordance with AS 3959.
D. Within areas identified as Bushfire – Urban Interface in a Hazard Overlay to the PDC that are within 500 m of a high bushfire risk area and no closer than 100m of the high bushfire risk area – BAL Low.
E. Within areas identified as Bushfire – Urban Interface in a Hazard Overlay to the PDC that are within 100 m of a high bushfire risk area the relevant BAL for the site identified by a site assessment carried out in accordance with AS 3959.

Clearance allowances should be based on the Bushfire Attack Level of the property. This assessment not only allows for a holistic, evidence-based approach but also provides a crucial opportunity to educate homeowners about what does and does not constitute a bushfire risk and to encourage them to draw up a realistic and well-informed bushfire action plan. The BAL rating could also be accompanied by recommendations for modifications that could be made to the dwelling to reduce bushfire impact.

BAL assessments are currently conducted by a qualified member of the CFS. Currently though, the CFS can be sued when providing a BAL assessment for a property – this tends to happen if they classify a property with a high BAL level, resulting in significantly higher construction costs. This should be resolved to give the CFS indemnity. Ideally, the process of manual BAL assessments would continue. Therefore, there are two further options that should be considered when assessing BAL ratings.

Discussions with the CFS highlighted that despite resourcing challenges, their preference is for BAL ratings to be carried out manually. They did however acknowledge that in the future, using LiDAR to automatically generate a BAL rating, as discussed in further detail in "Tree Preservation and Bushfire Prevention: A Comparison of Australia's Bushfire Clearance Exemptions" could become a viable option as the technology progresses. To deal with the resourcing challenge that this new method would create, the following is proposed:

The introduction of qualified consultants to perform a BAL assessment

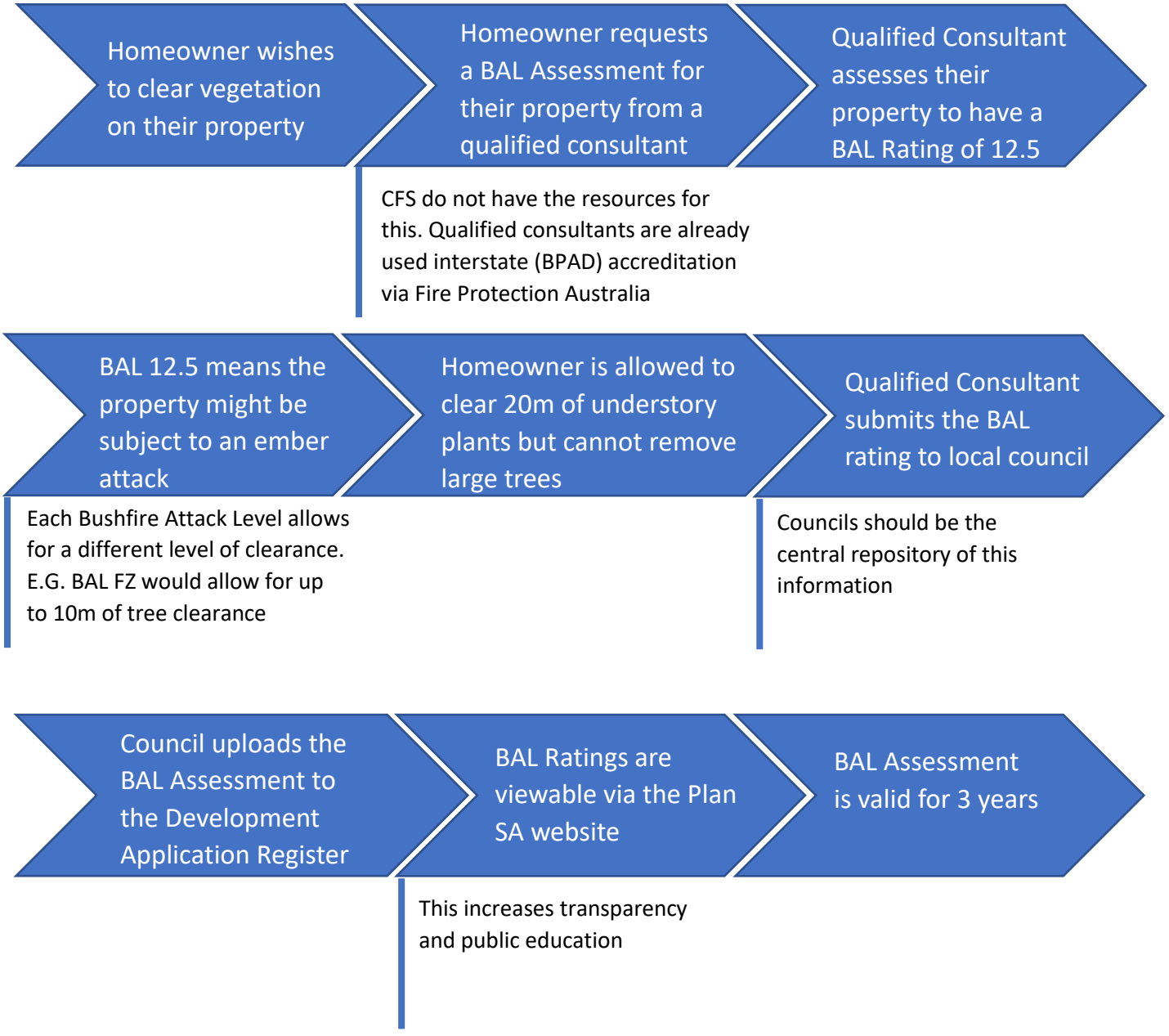
This is a practice widely used interstate, with NSW, VIC and WA all allowing homeowners to contract certified practitioners to obtain a BAL rating. Given that substantial sections of our new planning system involve the use of accredited consultants or private certifiers this ties in with existing practices. Fire Protection Association Australia (FPAA) is the national technical and educational fire safety organisation and provides a list of accredited Bushfire Planning and Design (BPAD) consultants for NSW, VIC and WA on their website. Both the NSW RFS and the VicPlan websites encourage the public to use these consultants to obtain their proposed development's BAL rating. Adopting a similar process here in South Australia would limit the resource implications for an already stretched CFS, while helping to create an Australian-wide standard. It would also be likely to speed up assessment times. Legal indemnity should also be considered for accredited consultants.

The BAL rating assessment should be incorporated into the PlanSA website and South Australian Property and Planning Atlas (SAPPA) map, allowing for residents to see their BAL Rating (useful if the property is sold) and for neighbours to have an idea of the BAL their property might receive if they are to make an application.

BALs should be given an expiry date, where the homeowner would need another assessment to continue clearing.

Should homeowners not wish to have a BAL assessment conducted to remove a tree, they can apply to the local council. If the tree is introduced, the council will conduct an assessment of the tree as outlined in the Planning and Design Code. If the tree is native, this application will be passed onto the Native Vegetation Council for assessment - not assessed by the CFS as the current process stands. Critically, with all applications passing through the council, this allows for a level of transparency, assisting with both tracking the loss of tree canopy, numbers of trees removed and compliance related issues.

Process Example:



Priority #5 - Pruning Using AS4373

Planning, Development and Infrastructure (General) Regulations 2017 (SA), Regulation 3F(6)

Currently, the PDI Regulations provide that regulated/significant trees can be pruned up to 30% without requiring Council approval. This is resulting in death by a thousand cuts and Councils footing the bills for expensive legal disputes.

For some trees, as little as 10% is too much, while others can cope with up to 50%. More important than an arbitrary percentage is that the pruning does not adversely impact the health or the appearance of the tree. Action to Take:

Recommendation #9 - *Require all pruning of regulated/significant trees to be carried out according to the Australian Standards AS4373 for Pruning of Amenity Trees.*

Require lodgement with Councils of a diagram of proposed pruning and the qualifications of the person undertaking the work.

The Australian Standard, AS 4373, is used widely throughout the rest of Australia to manage the pruning of trees.

Example:

The City of Sydney will allow pruning without a permit provided the pruning:

A. does not remove more than 5% of a tree's canopy; and
B. does not damage or affect the health or structural stability of the tree; and
C. is undertaken in accordance with the relevant Australian Standard for the Pruning of Amenity Trees, using a qualified Arborist (minimum Australian Qualification Framework (AQF) Level 2 Arboriculture). AS4373

Priority #6 - Streamlined Approvals

A primary driver behind the changes made to the Regulated and Significant Tree Regulations in 2011 was the slow processing time of applications to remove trees. This created substantial issues with public perception of the process and slowed development.

As not all applications to remove regulated trees require an arborist report, healthy trees can be removed unnecessarily. Conversely to this, due to the number of tree loppers (not proper arborists) operating in this industry, it is not unusual for Councils to request a second opinion on the removal of a tree, causing further delays to the process. Being able to have a speedy application process that puts in place the right checks and balances is important to being able to meet community expectations in this area.

Recommendation #10 –Councils should establish a list of 4-5 external qualified arborists available to be contracted by homeowners to assess applications for regulated tree removals.

Based on their reports, approval can be granted (or not) without further assessment by Council. This would be similar to a deemed to satisfy application pathway, encouraging homeowners to seek qualified advice regarding their trees, for quicker approvals.

In order to reduce conflicts of interest, do not allow the same company or arborist who makes an assessment for a regulated or significant tree removal to undertake the work.

Additionally, should the definition of a regulated tree be changed to that of a smaller size, there will be substantial pressure for more arborists and there is already a shortage. Consideration should be given to protecting trees of a smaller size but not requiring an arborist report for their removal, unless requested by Council or the tree hits a secondary size threshold.

Priority #7 - Improve the Urban Tree Canopy Overlay and associated Off-set scheme

The introduction of an offset scheme to support policy in the Code's Urban Tree Canopy Overlay (the Overlay) incentivises developers to take the easy option of paying, not planting. This will lead to reduced tree canopy and increased urban heat islands. Tree planting obligations are vastly inadequate in the Code and significantly less than mandated in other states such as NSW.

Some key points on the scheme:

- The introduction of this offset was fundamentally opposed by councils, individuals and community groups in the second round of consultation for the Code
- It was implemented without proper research being conducted into how much of greater Adelaide was impacted by the three soil types
- The City of Mitcham estimates that around 75% of their land has one of these soil types

The Overlay only applies to new developments and not renovations / extensions despite the fact that these development types make up a significant proportion of work. The "Where will all the trees be?" report published by Greener Places Better Spaces in 2020, identified The Town of Walkerville as having the biggest drop in tree canopy of all metropolitan Adelaide councils since 2016 at 3.5%. This canopy loss was not necessarily due to new developments, "but more likely to views, swimming pools, tennis courts and patios as existing residences are expanded".

Recommendation #11

- *The Overlay should be amended so that paying the offset amount is not the cheapest and easiest alternative for developers*
- *Increased compliance work needs to be done to check that the trees are planted and maintained*
- *Increase the number and size of trees to be planted*
- *The scheme should apply to renovations and extensions*

The offset amount should be increased to reflect the lost community benefit. This was specified as $3,435 for each tree as outlined in the cost-benefit analysis presented to the State Planning Commission.

Priority #8 - Increase the Cost for Removing a Protected Tree

Planning, Development and Infrastructure Act 2016 (SA), s127(6)(7) and Planning, Development and Infrastructure (General) Regulations 2017 (SA), Regulation 59 and Planning, Development and Infrastructure (Fee, Charges and Contributions) Regulations 2019 (SA), Schedule 1, Part 5, 27

If the removal of a regulated / significant tree is approved, homeowners are required to plant 2/3 replacement trees for removal of a regulated/significant tree, respectively, further than 10m from a

dwelling. If the homeowner doesn't want to plant replacement trees, they pay a fee of $150 per replacement tree not planted.

There are two problems with this. The low fees neither act as a deterrent for removal, nor do they accurately value the benefits provided by the tree. There are no checks put in place by Councils to monitor that the required planting happens and those who do not like trees simply ignore this directive or let the trees die.

Many Councils have reported they do not have the public space to plant replacement trees. The net result is no tree.

Recommendation #12 - The conditions for removal of a tree should accurately reflect the value of the lost tree and/or the cost to Councils for planting, establishing and maintaining replacement trees elsewhere.

- Remove the option in the PDI Act to plant replacement trees.
- Increase the current fees in the Regulations to more realistically match the value of the tree removed. Determine the fee using an agreed method. Ideally an Australian Standard would be introduced to do this, eliminating the need for a council to choose a preferred method of valuation.
- Fees to be waived if a tree is assessed by a Council arborist to be diseased, beyond recovery or dangerous.

Priority #9 - Prevent the Removal of Trees Before Development Applications are Approved

The removal of trees from land should not be allowed until such time as all relevant approvals have been granted. Back in 2017, Mark Parnell MLC introduced the "Planning, Development and Infrastructure (Regulated Trees) Amendment Bill 2017". The intention of this bill was to only allow for the removal of regulated and significant trees at the time that all approvals associated with the proposed development had been granted.

"If a proposed development involves a component that provides for an activity that constitutes a tree-damaging activity at a site, a development authorisation cannot be granted in relation to the tree-damaging activity unless all components of the proposed development at the site that cannot be undertaken unless the tree-damaging activity occurs are authorised by a development authorisation."

While this bill was not passed, it was a logical step that doesn't impede future development but puts the emphasis back on preventing the unnecessary loss of large trees. Far too often, approvals to remove regulated and significant trees are granted despite there being no intention to develop the land at that time. This can often result in blocks sitting bare - except for weeds - for years.

A prime example of this was the approved removal of some 83 trees for the Glenside redevelopment back in 2017. Much of the land where the trees were removed has only been redeveloped in the past year or so, seeing a loss of nearly 5 year's worth of environmental benefits from the trees that were removed, as well as significant loss of habitat and amenity over that time.

Recommendation #13 – Consider implementing Mark Parnell MLC's "Planning, Development and Infrastructure (Regulated Trees) Amendment Bill 2017"

Priority #10 – Changing the Definition of Native Vegetation

Native Vegetation is defined in the *Native Vegetation Act 1991* as:

"*Native vegetation means a plant or plants of a species indigenous to South Australia including a plant or plants growing in or under waters of the sea but does not include—*

(a) a plant or part of a plant that is dead unless the plant, or part of the plant, is of a class declared by regulation to be included in this definition; or

(b) a plant intentionally sown or planted by a person unless the plant was sown or planted—

(i) in compliance with a condition imposed by the Council under this Act or by the Native Vegetation Authority under the repealed Act, or with the order of a court under this Act or the repealed Act; or

(ii) in pursuance of a proposal approved by the Council under Part 4 Division 2; or

(iia) in circumstances involving the use of money paid into the Fund for the purpose of achieving a significant environmental benefit; or

(iii) in compliance with a condition imposed by a Minister, statutory authority or prescribed person or body under—

(A) the River Murray Act 2003; or

(B) the Water Resources Act 1997; or

(C) any other Act prescribed by the regulations for the purposes of this paragraph;"

It is nearly impossible to tell if a native tree has been planted or self-seeded. This opens the potential for property owners to select the clearance rules that work best for the situation. From conversations with people involved in dealing with native vegetation approvals, the specifics of this definition have been problematic. There is no difference in terms of environmental contribution between planted and remnant trees.

Recommendation #14 – Change the Definition of Native Vegetation to something enforceable

Option 1 - The definition of native vegetation should be refined to remove any references differentiating planted from remnant.

Option 2 - Trees that are native to the local area should be classified as native vegetation, regardless of if they are planted or remnant.

Priority #11 – Changing the Native Vegetation Approval Process for Trees

To remove a large native tree (trunk circumference of 2m) that is further than 10m from a dwelling, applicants must apply to the CFS for the removal of the tree. The CFS will assess the application to see if the tree is a bushfire risk. If rejected, the applicant must then apply to the Native Vegetation Branch to remove the large tree. The Native Vegetation Branch will assess the tree to be removed and if approved, publish this on their website.

The CFS rejects a significant majority of applications to remove large native trees that are further than 10m from a building. Large trees very rarely pose a bushfire risk. At the same time, the applicant is unlikely to be applying to remove the tree because it presents a bushfire risk. Instead, they would like to see it removed to facilitate development or believe it might be dangerous.

This wastes time and resources for the CFS with it being extremely likely that the applicant will apply to the Native Vegetation Branch. The public register of approved native vegetation clearances was last updated in 2020. This is due to resource shortages. As a result, there is no active and updated public record of approved clearances, resulting in compliance issues and a lack of transparency. This has further implications for the general public trying to report breaches of the Native Vegetation Act 1991. Trees are seen as the responsibility of councils and many homeowners are unaware of the proper approval process in these situations.

Recommendation #15 – Simplify the Assessment Process for Large Native Trees

The process to remove a native tree should be streamlined and simplified. Applications for removal should be lodged via the Plan SA portal, to provide greater transparency and public notification and processed by the relevant council. The assessment options are as follows:

1. Request to remove due to bushfire risk The CFS should provide qualifications and training to Council arborists or Bushfire Prevention Officer to be able to determine if trees pose a bushfire risk.

2. Request to remove tree due to safety risk Council arborist will assess the tree and approve / deny the application.

Process will follow a similar pathway to assessing a regulated tree for safety issues.

3. Request to remove tree for new development / other reason Application is submitted to council. Homeowners will then be required to contact one of the qualified native vegetation consultants to assess the tree and run through a typical native vegetation process / calculate SEB offset. Depending on the level of clearance, this may trigger public notification and a decision to be made by the Native Vegetation Council as currently occurs. As outlined in the 30-Year Plan for Greater Adelaide, maintaining tree canopy is a responsibility of local government and this process gives them greater input and better meets community expectations and stops wasting the time of both applicants and existing relevant authorities.

Case Examples

Case Study 1 – Block Clearings in Eden Hills, Asset Maintenance or Bushfires?

The suburb of Eden Hills is the prime example of where the intersection between native veg and regulated tree protections is failing to stop the unnecessary removal of trees. The blanket exemptions, put in place for either asset maintenance or bushfire prevention, are being abused to clear blocks.

These Grey Box trees were cut down so that the house could be redeveloped. No application was in at the time for a new dwelling and hence, the 10m asset rule is still in place. Additionally, neighbouring properties were used along with the 20m rule under the Native Veg Regs. The remaining trees out the front of the property are only standing because council intervened at the request of very upset neighbours. The house plans submitted showed the block intended to be totally cleared.

Other similar situations to this in Eden Hills have seen the police called to mediate between neighbours and tree loppers.

Case Study 2 – Development Made Easier

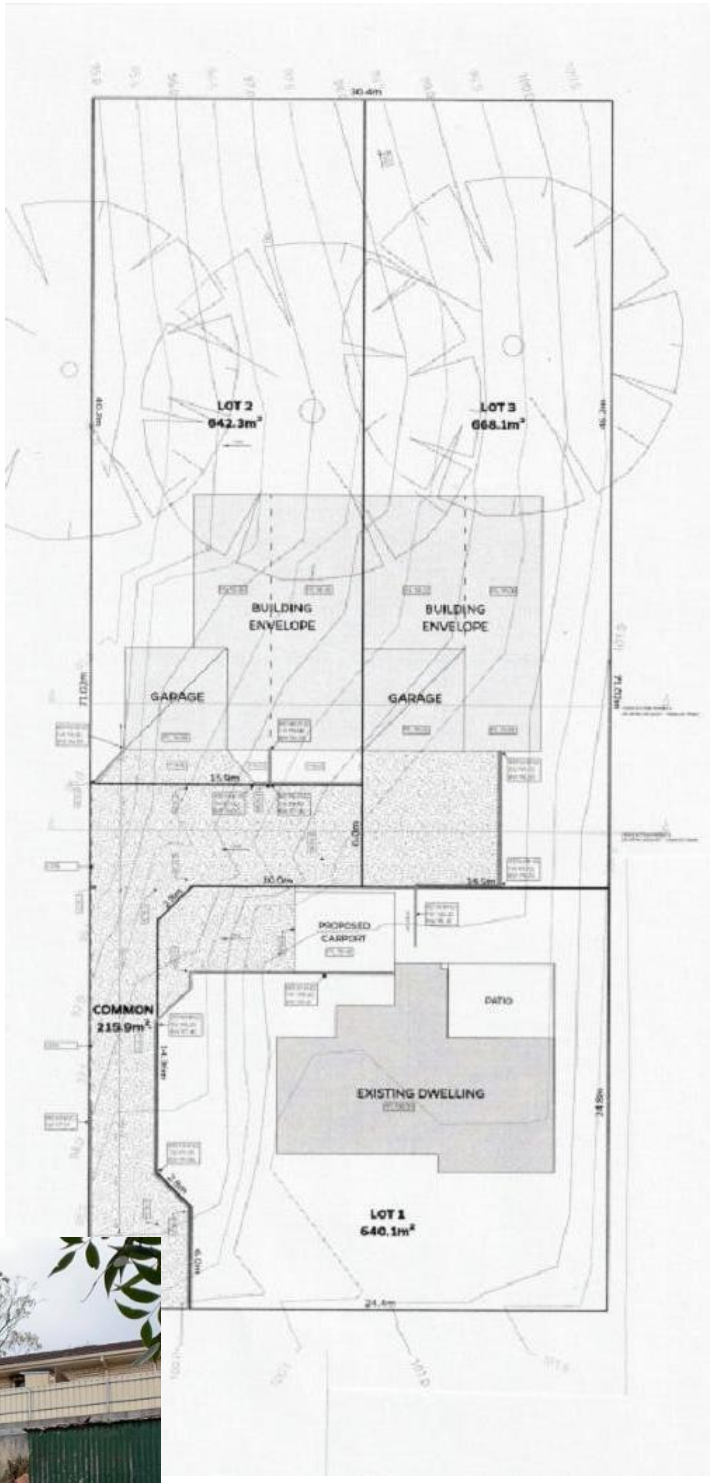
The lack of protection for trees in areas overlapped by both native veg and regulated tree protections has made higher density developments in high bushfire areas easier. There are no requirements to retain trees (which in the vast majority of situations do not contribute to an increased bushfire risk) and this allows for wholesale block clearing even if it wasn't needed.

Two houses to be built on this block, the trees can be conveniently cleared before any plans are submitted.

Three for one – made nice and easy! Like most other situations, the trees out the front of the property could have been retained with a bit of effort.

Case Study 3 – Native or Not?

The City of Mitcham allowed a battle-axe subdivision to occur for a property up in Blackwood. This was done with the intention that the two large South Australian Blue Gums were retained on the site. A specific building envelope was created so that these trees could be retained. These trees were further than 10m away from any building on the property. Back in 2019, one of these trees was cut down, as the current owner of the land and the tree lopper saw that they were within 20m of a residential dwelling. Apparently, they didn't know that the 10m NVR rule applied to these trees.



The land changed hands a year or so later and this is when the second tree was cut down. Once again, the assumption was that the tree was within 20m of a neighbouring dwelling.

Both tree removals were illegal. The blocks are still empty to this day despite multiple attempts to sell them.

It could well be argued that these Blue Gums were planted and therefore, the 20m rule applied.

Case Study 4 – Native or Not, with Expert Opinion

St Johns School's proposed development of a new education building saw differing opinions from an arborist and native vegetation expert on if trees on the site were 'native' – had or hadn't been planted. The expert arborist decided that all three Grey Box trees had been planted.

Tree 4: ***Eucalyptus microcarpa*** **(Grey Box)**	**No Protected Tree**	**The Grey Box is a small, structured tree and is a semi mature tree specimen.** **This specimen was a planted tree.** **The height of the tree is approximately 6 meters.** **The tree is a twin-stemmed tree.** **The health and condition of the tree is good.** **Following are the Structural Root Zone (SRZ) and Tree Protection Zone (TPZ) measurements.**
Tree 5: ***Eucalyptus microcarpa*** **(Grey Box)**	**Regulated Tree** **Average stem circumference greater than .625 meters**	**The Greybox Gum is a small, structured tree and is a semi mature tree specimen.** **The height of the tree is approximately 6- 7 meters.** **The tree is a multi-stemmed tree.** **The health and condition of the tree is good.** **Following are the Structural Root Zone (SRZ) and Tree Protection Zone (TPZ) measurements.**
Tree 6: ***Eucalyptus microcarpa*** **(Grey Box)**	**Regulated Tree** **Combined stem circumference greater than 2 meters.**	**The Greybox Gum is a large tree and is a semi mature tree specimen.** **The height of the tree is approximately 15 meters.** **The health and condition of the tree is good.** **Following are the Structural Root Zone (SRZ) and Tree Protection Zone (TPZ) measurements.**

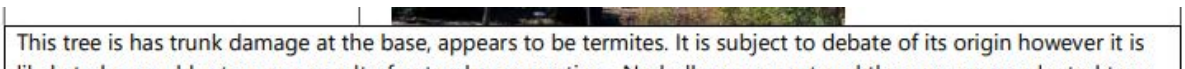
8.5 The three **Grey Boxes** are located within the footprint of the proposed car park extension and the removal of these three trees will ensure a larger number of native species which are more mature are protected from the proposed development.

8.6 The three **Grey Boxes** within this report are planted specimens.

However, St Johns also engaged a qualified native vegetation consultant, who had a different opinion on the trees. Here are some snippets from the report:

This tree is in good condition complemented by planted Eucalyptus microcarpa and Callitris gracilis. It is subject to debate of its origin which is most likely a seeded species from trees found on roadside. No hollows present.

This tree is in good condition complemented by planted Eucalyptus microcarpa and Callitris gracilis. It is subject to debate of its origin however it is likely to be an older tree as a result of natural regeneration. No hollows present with numerous other trees on roadside and within the immediate area.

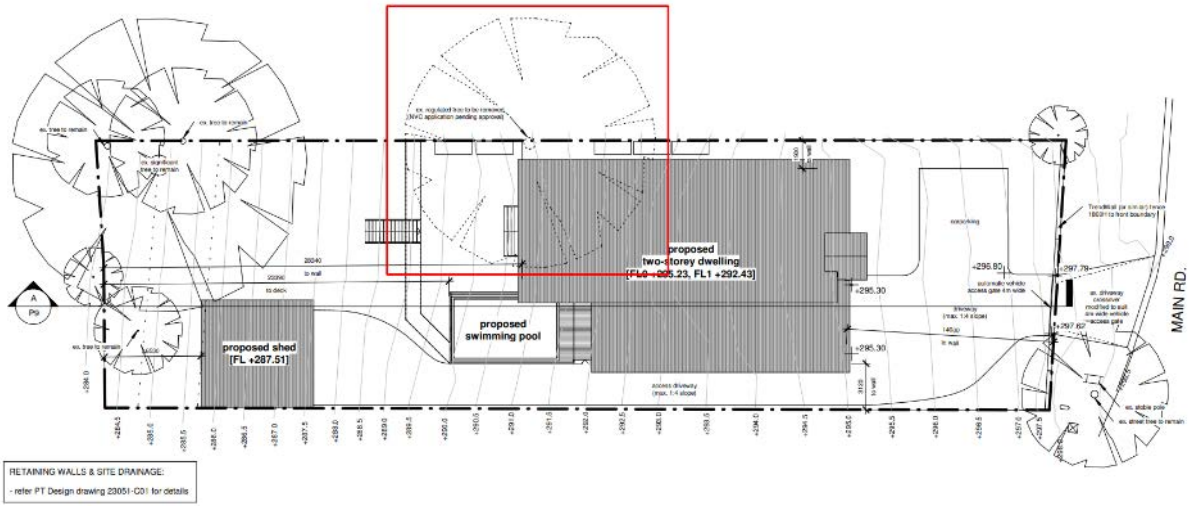


This tree is has trunk damage at the base, appears to be termites. It is subject to debate of its origin however it is likely to be an older tree as a result of natural regeneration. No hollows present and there are some planted trees within the immediate area not requiring analysis.

St Johns School paid an SEB offset to remove the three Grey Boxes. This example shows that even the experts can be confused and there is a need to change the definition of native vegetation.

Case Study 5 – Block of Land in Belair

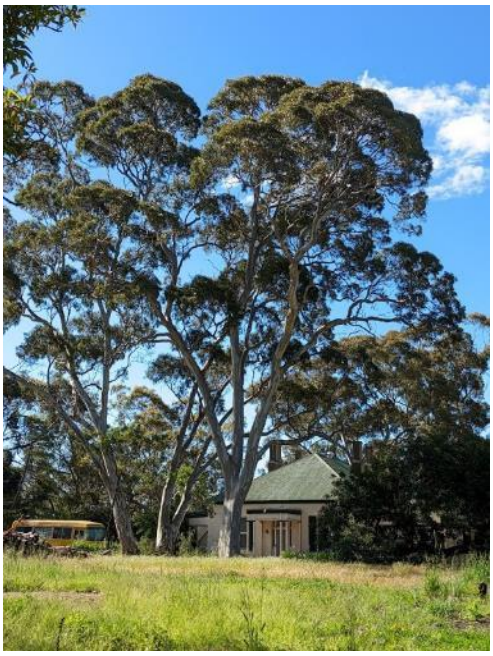
An application was submitted to Mitcham Council to construct a two-storey detached dwelling, swimming pool, outbuilding (shed), front fence and associated earthworks and retaining walls. Back in March 2021, the same site in question had illegally removed two South Australian blue gum (Eucalyptus leucoxylon) which were located in the middle of the site.



At the time of submission, the Native Vegetation Declaration was incorrectly filled out, stating that no native vegetation was to be cleared. This was incorrect, as the large tree with the red box around it was proposed to be cleared. There was no attempt to try and retain this tree by the homeowners and it was not clear that Council requested a different house plan that retained the tree. No questions were asked as to why the driveway could not run down the Northern side of the block (where the tree was), to potentially allow for its retention. With the tree being nearly directly on the boundary, the block size of nearly 1,200sqm, it should have been possible to retain this tree and build a sizeable family home. Regardless, as this tree was to be within 10m of any proposed dwelling, it has nearly automatic approval given to it by the Native Vegetation Branch for removal.

Case Study 6 – SEB Offsets

This beautiful tree (one on the right) will be 9.64m from the proposed new two-storey house for this block of land. The new owners have stated that they do not tend to remove this large native tree.



Regardless, as the tree is within 10m, they would have automatic right to removal once the house is built. This means they must pay an SEB offset. While in this situation the homeowners might like the tree, it isn't hard to imagine situations where the owners will just choose to remove it. The same is true for a shed, or any other building that requires council approval. The blanket 10m rule is making development more expensive and encouraging the pre-emptive removal of native vegetation.

Case Study 7 – Burnside Illegal Tree Removal

This tree out in the City of Burnside was identified by a practising Arborist of more than 25 years as a Spotted gum (Corymbia maculata). Despite being of a regulated size, as the tree was within 10m of a dwelling, the arborist removed the tree. It turns out that the tree in question was not a Spotted gum and was in fact a Sydney blue gum (Eucalyptus saligna). This meant that the 10m rule did not apply to the tree and that it was felled illegally. Additionally, the tree was also listed on Burnside's significant tree register, which actually exempt trees from the 10m rule.

Of a maximum fine of $120,000, the arborist was convicted and fined $8,000 (which was discounted by 35% on account of his early guilty plea to $5,200). The Court also awarded the Council its costs of the proceedings.[1]

This is a prime example of why species-specific exemptions can be tricky, given the fact that even experts can get the identification of trees incorrect.

Case Study 8 – Poolside Trees

This Lemon-scented gum was located in Melrose Park. It was a very large specimen of the species. The owners of the tree paid for an arborist report to try and remove the tree. When Council assessed the application, it turns out that the tree was within 10m of the neighbours pool (behind the fence). As a result, Council didn't have to approve the application, the homeowners wasted money on the report and the tree got cut down. We are the only state where this is possible.

[1] https://www.normans.com.au/news/conviction-recorded-against-arborist-who-made-a-mistake

Case Study 9 – Anything within 10m…

This property out at Burnside was nearly totally cleared without requiring any council approvals. Approval was only required to remove one tree.

Case Study 10 – Urban Infill and the 10m Rule

As covered in previous case studies, distance-based exemptions are being abused for reasons other than their intended purpose. This is also the case for the 10m rule as set out under the planning regulations. This block over in Glenunga is another prime example where everything on the block, even the trees on the boundary have been totally cleared to make way for new homes.

Figure 3 Aerial Images of the Same Block

Case Study 11 – City of Banyule, Victoria – Vegetation Overlays

The City of Banyule in Victoria uses vegetation overlays extensively to protect trees and vegetation on private land. These overlays fit in with 'VicPlan', Victoria's version of the PlanSA website. Residents can see visual maps of where the Vegetation Overlays apply and get information on what they are allowed to do on their property. Vegetation overlays have been used in Victoria since the late 1990s.

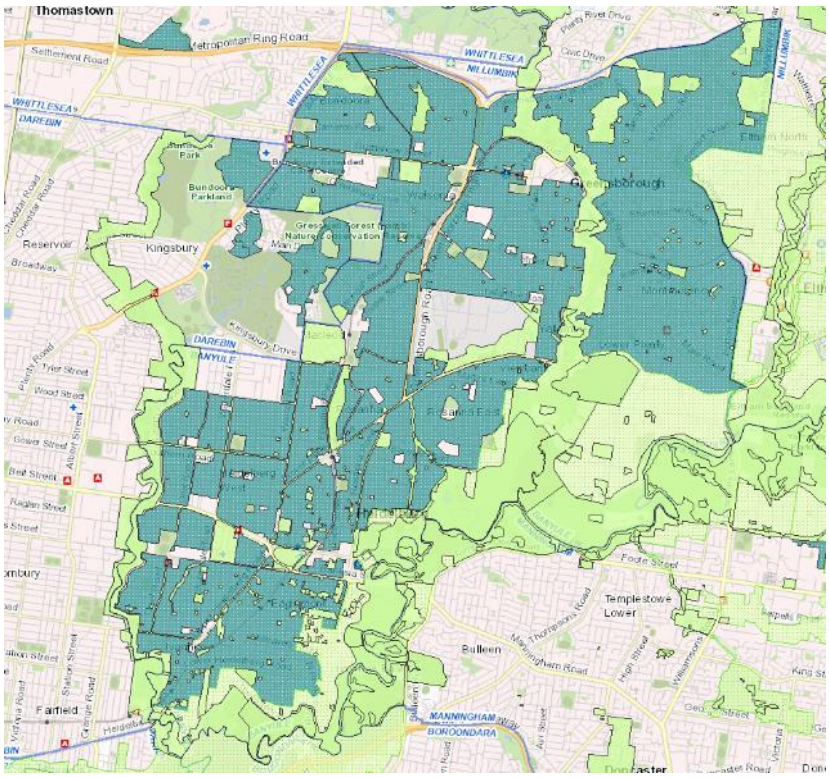
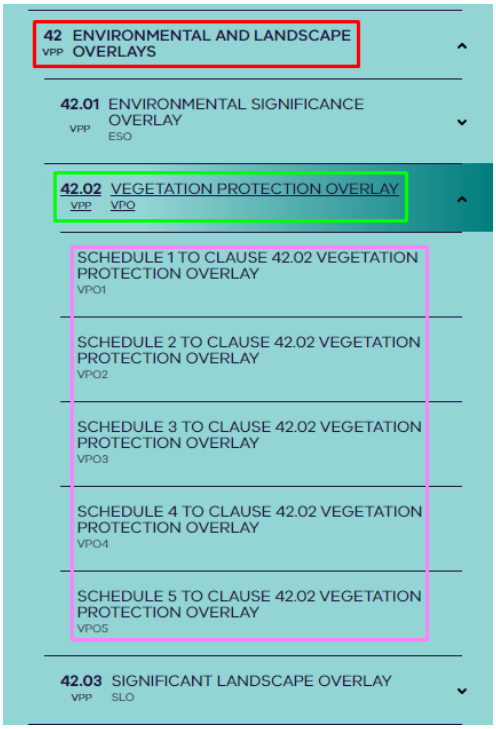


Figure 4 City of Banyule with the Vegetation Overlays Applied

You can see the Environmental and Landscape Overlays that apply to the City of Banyule here (Red Box). Specifically, the Vegetation Protection Overlays are detailed in section 42.02:



The City of Banyule has some 5 different Vegetation Protection Overlays (Purple box) that are applied differently across the city, allowing for specific exemptions and protection criteria to be put in place to determine what homeowners can do. This is similar to how the Technical and Numerical variations allow for different block sizes across different council areas even if the zoning of that land is the same.

Looking specifically at two VPOs applied across the Banyule, VPO1 and VPO5. Important aspects of the overlays are highlighted in yellow. It is important to note that in Victoria's case, each VPO has different decision guidelines to determine if trees should stay or not when an application for removal is submitted.

Figure 5 VPO5 on the Left - VPO1 on the Right

VPO1, Plenty River East Area, shows that native trees with a trunk circumference more than 5m in height and with a trunk circumference of more than 50cm at 1m above the ground is prohibited. This VPO specifically applies to native vegetation. The following information is included with the VPO1:

Statement of nature and significance of vegetation to be protected

This area contains developed and developing urban areas which have significant natural, habitat and environmental qualities. In recent studies the area has been identified as including areas of state, regional and local faunal and habitat significance. It includes predominantly residential areas supporting substantial remnants of indigenous vegetation of at least local conservation significance, providing habitat for a variety of native birds and arboreal mammals threatened with local extinction. The native vegetation is also recognised as a major contributor to the landscape of the area, its distinctive local character and visual amenity.

The continued viability of the area as a significant environmental resource is under threat from the continued urban development of the area. Many areas of vegetation have been lost or radically altered, despite tree protection covenants in the most recently subdivided areas. The remaining areas of native vegetation have become increasingly fragmented and their habitat value is threatened. Accordingly the protection of the native vegetation and maintenance and enhancement of the habitat for indigenous fauna are of vital importance.

Vegetation protection objectives to be achieved

- *To conserve the existing pattern of vegetation, landscape quality and ecosystems within the area.*

- *To address the threatening processes associated with widespread habitat loss and degradation that has occurred in North East Melbourne.*
- *To protect the area as a habitat for local fauna and as an important habitat link.*
- *To promote the retention of existing indigenous vegetation wherever possible.*
- *To ensure that the development, use and management of land is compatible with the existing character and landscape conservation of the area.*

Permit requirement

A permit is required to remove destroy or lop any native vegetation.

This does not apply:

- *To the removal, destruction or lopping of native vegetation which has been planted for garden or horticultural purposes and which is less than 5 metres high and has a single trunk circumference of less than 0.5 metres at a height of 1 metre above ground level.*
- *To the removal, destruction or lopping of vegetation identified as environmental weed species in the Banyule Weed Management Strategy.*
- *To the removal or pruning of street trees in accordance with the Banyule Street Tree Strategy.*
- *To the pruning of vegetation to maintain or improve its health, structure or appearance, including regeneration.*
- *To the pruning or removal of vegetation to prevent damage to works when damage to a pipeline, electricity or telephone transmission line, cable or other service has occurred or is likely to occur.*
- *To the removal, destruction or lopping of dead vegetation unless the dead vegetation is a habitat tree containing hollows.*
- *To the pruning, removal or destruction of any vegetation where an agreement exists between a railway carrier and the Department of Sustainability and Environment, or where the pruning, removal or destruction of vegetation is the minimum amount necessary to provide for the safe operation of the rail service for the safety of the travelling public.*
- *To the removal, destruction or lopping of vegetation carried out in accordance with a management plan prepared to the satisfaction of the responsible authority.*

Decision guidelines

Before deciding on an application to remove, destroy or lop any native vegetation, the responsible authority must consider, as appropriate:

- *Any report on the value or otherwise of the specified vegetation including*
  - *An Inventory of Sites of Environmental Significance in the City of Banyule and Adjoining Areas. Banyule City Council.*
  - *Sites of Faunal and Habitat Significance in North East Melbourne.*
  - *Banyule Wildlife Corridor Program.*
  - *Banyule Weed Management Strategy.*
- *The benefits of retaining a buffer strip of vegetation within specified distances of watercourses, roads and property boundaries.*

- *Whether the application includes a landscape plan or agreement to replace areas of vegetation on the land.*
- *The value of the vegetation to the visual amenity of the area.*

VPO5 Substantial Tree Protection Area (on the left side of the above graphic, applies to more than just native vegetation. The VPO includes the following details:

Statement of nature and significance of vegetation to be protected

Banyule's vegetation and treed streetscapes are one of the most valued characteristics that contribute to the City's neighbourhood character. Whilst the vegetation cover in much of Banyule's Garden Suburban and Garden Court neighbourhoods is noticeably less than other areas of the City, these neighbourhoods do include a significant number of large indigenous, native and exotic trees (Substantial Trees) that are prominent above and around existing dwellings. These Substantial Trees beautify and add natural interest to these residential areas.

Banyule's Garden Court and Garden Suburban neighbourhoods are located between important waterway corridors, natural features and sites of botanical significance. Indigenous, native and exotic Substantial Trees in these neighbourhoods therefore assist in wildlife movement across the City, provide important faunal habitat and assist in the protection of waterways.

Substantial Trees feature in the remnant overstorey of Garden Court and Garden Suburban neighbourhoods. These areas contain one or a number of indigenous species, remnant exotic trees, and areas of dense remnant overstorey all with a high degree of naturalness. This overstorey is tall vegetation that represents Banyule's natural heritage, and includes species that are rare, threatened or of local, regional or State significance.

The generally wider canopy spread and larger structure of Substantial Trees in Garden Court and Garden Suburban neighbourhoods help to build local identity and make a visual contribution to the urban character of a street, surrounding neighbourhood, and landscape including contributing to Banyule's ridgelines which are visible in backdrops and vistas. They also assist in stabilising the local environment through processes including; reducing the severity of temperature increases associated with the 'urban heat island' effect, sequestering harmful pollutants and managing storm water.

The significance of Substantial Trees and their incremental removal affects the City in a number of ways. Tree protection and management, together with new and replacement tree planting on properties in Garden Court and Garden Suburban neighbourhoods, can help to safeguard and offset any incremental loss and improve the range of benefits Substantial Trees provide.

Vegetation protection objectives to be achieved

- *To retain and protect existing trees, and to promote further planting of new trees as a significant component of local identity and neighbourhood character.*
- *To protect vegetation of special significance, natural beauty, interest and importance.*
- *To retain vegetation that represents the cultural and/or natural history of the City.*
- *To retain and protect existing trees, and to promote further planting of new trees to enhance streetscapes, ridgelines and backdrops in residential areas.*
- *To ensure that, where tree removal is permitted, appropriate replacement planting is provided and located appropriately on site.*

- *To retain, protect and promote further planting of trees in residential areas to provide habitat links and movement corridors for fauna.*
- *To retain trees which contain hollows as habitat for local fauna.*
- *To retain trees that buffer waterways.*
- *To maintain remnant and/or indigenous overstorey vegetation to provide biodiversity and a source of genetic material for the re-establishment of the natural heritage of the City.*
- *To retain indigenous native vegetation which is rare, threatened or of local, regional or State significance.*
- *To retain exotic trees and non-indigenous native trees, unless identified as an environmental weed.*
- *To manage the long term viability of significant avenue plantings and heritage trees.*
- *To retain, protect and promote further planting of trees for their contribution to stabilising local environmental processes including shading and cooling effects, sequestration of pollutants and management of storm water.*

Permit requirement

A permit is required to remove, destroy or lop those trees which meet either of the following:

- *Has a height of 12 metres or more, or*
- *Has a trunk or stems that collectively are more than 400mm in diameter, measured at 1400mm above the base of the tree.*

A permit is not required:

- *To remove, destroy or lop the minimum extent of vegetation necessary to continue the activity on land within the formation of a railway line which has previously been cleared.*
- *To remove, destroy or lop the minimum extent of vegetation necessary to maintain public utility services for the transmission of water, sewage, gas, electricity, electronic communications or the like.*
- *To remove, destroy or lop vegetation that presents an immediate risk of personal injury or damage to property, if only that part of vegetation which presents the immediate risk is removed, destroyed or lopped.*
- *To prune vegetation to remove any branch that overhangs an existing dwelling or is within 2 metres of an existing dwelling.*
- *To prune vegetation to maintain or improve its health, structure or appearance including regeneration..*
- *To remove, destroy or lop vegetation that is dead to the satisfaction of the responsible authority, unless the dead vegetation is a habitat tree containing hollows.*
- *To remove, destroy or lop vegetation that is being maintained in accordance with a management program developed by a suitably qualified arborist and approved by the responsible authority.*
- *To remove, destroy or lop vegetation identified as environmental weed species in the Banyule Weed Management Strategy.*
- *To remove, destroy or lop street trees in accordance with the Banyule Street Tree Strategy.*

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 42.02, in addition to those specified in Clause 42.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- *The need to retain vegetation that is significant due to its species age, health and/or growth characteristics.*
- *The need to retain vegetation that contributes to neighbourhood character.*
- *Where the vegetation is located, its relationship to existing vegetation and its role in providing habitat and corridors for fauna and its contribution to local environmental processes.*
- *The compatibility of any buildings and works with existing vegetation proposed to be retained.*
- *The effect of any proposed lopping on the significance or appearance of the tree.*
- *Whether there is a valid reason for removing the vegetation and whether alternative options to removal have been fully explored.*
- *Whether the removal of vegetation is required to deliver a development outcome that makes a substantial and positive contribution to the planning outcomes for the site and surrounding area. The application's response to relevant objectives, strategies and policy guidelines of the Preferred neighbourhood character policy at clause 15.01-5L-01 should be considered.*
- *If retention cannot be achieved, or a tree is considered appropriate for removal, consider whether the site provides adequate space for offset planting of indigenous or native trees that can grow to a mature height similar to the mature height of the tree to be removed. If it is not appropriate to select an indigenous or native tree species, the selected species should be drought tolerant.*
- *Whether the planting location of the replacement vegetation will enable the future growth of the canopy and root system of the tree to maturity, in accordance with the Banyule City Council Tree Planting Zone Guidelines.*
- *Whether the replacement tree species and planting locations conflict with* existing or proposed overhead wires, buildings, easements and existing trees.