

1 March 2019

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01 Mar 2019

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**Re: Planning, Development and Infrastructure (General) (Development Assessment)  
Variation Regulations 2019**

The Resilient East Project Steering Group welcomes the opportunity to contribute to the Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019.

This input does not reflect formal Council consideration of the proposed variation regulations, which is set out in separate Council submissions on the Regulations.

The Resilient East Project is a partnership between the Campbelltown City Council, the Cities of Adelaide, Burnside, Norwood Payneham & St Peters, Prospect, Tea Tree Gully, Unley and the Town of Walkerville and the South Australian Government. The partnership was formalised through a Sector Agreement, signed by the Chief Executive Officers of each of the Councils and Ian Hunter (former) Minister for Climate Change on behalf of the Government of South Australia in March 2017. Through this important collaboration, Resilient East seeks to improve the resilience of the region's communities, assets and infrastructure, local economies and natural environment to support appropriate planning for the inevitable impacts and challenges of climate change in the short, medium and long term.

**Purpose of Feedback**

The Steering Group is actively providing feedback on planning reform proposals as the various new planning strategy and policy instruments are developed. On that basis, I am pleased to provide the following feedback in response to the proposed regulations.

Whilst there was strong interest in responding to all aspects of the regulations, the Resilient East Steering Group have chosen to focus on those aspects of the regulations which are relevant to achieving the Government targets for increased canopy and green cover. Increasing canopy cover in the interest of adapting to a changing climate and supporting urban and peri urban biodiversity is a key climate adaptation strategy, with strategic targets set by the State Government's 30 Year Plan. Councils are undertaking considerable work in seeking to enhance tree canopy cover in line with this 30 Year Plan target. The reforms provide an opportunity to strengthen the regulations in order for Councils and State Government to work more effectively together improving green cover across the metro area. To meet the 2045 targets, strong policy commitment and practical and tangible mechanisms in the planning framework are needed to

protect existing canopy and green cover as well as creating significant new areas of canopy and green cover. Councils will continue to increase canopy cover on public land where possible, but there will be a substantial shortfall that can only be achieved on private land. Our submission includes suggestions to deliver the regulatory and cultural changes that are necessary to successfully tackle this problem.

### **Executive Summary** (and key messages to reflect in the 'What we have Heard' document).

There is strong emerging data and direct observation of an alarming rate of removal of large trees, canopy and green cover across metropolitan councils. The Resilient East Steering Group is not suggesting a return to the single significant tree classification, but does suggest practical ways for the regulations to be improved to recognise that we are now living in the midst of climate change and that the value that all trees provide for canopy and green cover is now higher, as a part of a critical climate change adaptation strategy for urban and peri-urban communities.

The recommendations suggested to assist in achieving the State Government and agreed 20% increase in canopy and green cover by 2045, includes stronger protections for regulated sized trees by:

- Amending Section 3 F (4) (a) for the regulated tree protections to be extended to cover *Corymbia* species and all remnant native trees in addition to the current *Eucalyptus* species and *Agonis flexuosa*.
- Amending section 3 F (4) (b) for application and approvals to be required through councils for all other regulated sized trees (regardless of species), including those within 10 metres of a dwelling or an in ground swimming pool so that removals can be properly assessed on a case by case basis.
- Including an additional mechanism under 3 F (4) for all trees registered on the National Trust - Significant Trees Register to be fully protected under the regulations and this register can be documented spatially on the zoning layer for regulated trees.
- Deleting the exemption under Section 18, (1), (c) which allows regulated sized trees to be removed within 20 metres of a dwelling in medium to high bushfire risk areas to instead seek approval as exemption duplicates provisions already established under the Fire and Emergency Services Act 2005.
- Deleting or modifying the exemption under 18, 1 (e) which allows dead trees to be removed to recognise the habitat and biodiversity support that dead trees can continue to provide, and encouraging landowners to support their living trees to be healthy.
- Deleting or modifying the exclusions under 3F (a) and (b) for pruning activities on regulated trees from the definition of tree damaging activity.
- Amending the recent exemption under (schedule 12 (2) (xiii) which allows for regulated sized trees to be removed on public school grounds without application, to instead be assessed on a case by case basis.

## State Planning Policies - Gazetted January 2019

The Resilient East Steering Group have noted the recent publication of the State Planning Policies (SPPs). The SPPs do not provide decisive intent for increasing canopy and green cover by 20% by 2045, or for supporting urban biodiversity. The State Planning Policies could be more effective if they included statements of 'requirement' rather than 'should' statements.

For example:

### Biodiversity SPP

- 4.4 Enhance (**Ensure that**) the biodiversity of urban areas and townships (**is enhanced**) through a connected and diverse network of green infrastructure systems along streetscapes, major watercourses, linear parks, open space, the coast and other strategic locations.

### Climate Change SPP

- 5.11 Regional Plans ~~should~~ (**must**) include performance targets for urban greening and tree canopy enhancement in Greater Adelaide and regional townships.

### Transport SPP

- 11.10 ~~Promote~~ (**Ensure**) the greening of strategic transport corridors to encourage carbon banking.

- + Non Statutory guidance note (**could be elevated to statutory policy**)

The Planning and Design Code should implement zoning that supports the development of land uses that complement strategic transport corridors while also encouraging the mitigation of environmental impacts that may occur. Code policy ~~should also encourage~~ (**must ensure**) the greening of strategic transport corridors and facilities to mitigate environmental and climate change impacts and improve amenity.

## DRAFT REGULATIONS

As the State Planning Policies do not reflect decisive policy commitments for tree canopy, green cover and supporting urban biodiversity, there is greater need for the regulations to ensure that desired outcomes are achieved.

### Draft Planning Regulations 3F –Significant Trees

#### Current tree protections are inadequate, including to achieve canopy targets and adapt to climate change

Changes in the Development Act around the protection of trees in 2011 and increased development pressures have resulted in an increase of tree and canopy loss across metropolitan Adelaide due to the legislation providing reduced protection measures.

The draft regulations transfer the current requirements into an overlay, showing where the regulated tree legislation applies, as different to and in addition to the Native Vegetation Management Act. However, the current regulations fail to protect most trees and do not adequately recognise the value that trees provide for the broader community as well as individual landholders. Protection of trees may be further weakened by the nature of the online approvals process of the new planning framework. Something else is needed to drive the change towards greener more livable cities.

Since the introduction of Significant Tree Legislation, subsequent amendments have reduced those measures to help protect trees over time. Examples include those amendments in 2011:

- reducing the level of protection provided for trees with a trunk circumference between 2 metres and 3 metres,
- the exemption of species most commonly occurring on private land regardless of historic, amenity or environmental attributes.
- The exemption of all species within 10m of a property (excluding *Eucalyptus* and *Agonis*)
- The removal of all species within 20m of an asset in a bushfire prescribed area
- The removal of those public owned trees occurring on public schools.
- The introduction of a species exemption list that includes species of trees desired within the urban environment and is more broadly counter productive to increasing tree canopy cover

These changes have dramatically reduced the effectiveness of the regulations to protect trees and of more concern, the changes have contributed to an erosion of the value that communities and the development sector place in trees.

The changes in essence continue to provide some protection for those last remnant indigenous trees that predate European settlement, trees that are deemed to have significant cultural value or protect against habitat loss, but the vast majority of trees are not valued and can be removed as incidental clearance to an approved development or felled under one of the many exemptions.

Many trees are intergenerational assets, helping to make urban areas desirable places to live and invest as well as providing habitat, urban cooling, shading and a whole range of other ecosystem services.

The 2011 changes to the legislation, to balance development with canopy conservation, are now seen to have resulted in excessive removal of trees and the normalisation of a *clear site* culture for re-development. Larger trees once gone, cannot be replaced and there is insufficient area to replace even smaller tree canopy cover on properties that have minimal outdoor open space. There is a need for policy review to ensure those trees that are planted to replace trees approved for removal, are not subject to the current exemptions as these trees mature.

There is large body of evidence based research demonstrating the loss of canopy Cover and how this is now occurring at an alarming rate. The City of Burnside canopy study identified a 10% loss of Canopy cover over a 5 year period between 2010 and 2015 (<https://www.burnside.sa.gov.au/Environment-Sustainability/Trees/Tree-Canopy-Report>). The City of Campbelltown Canopy Cover report also demonstrated a 6.5% loss in canopy cover between 2006 and 2016, the majority of which was from private land.

From the body of research undertaken across metropolitan Adelaide it is evident that most of the loss is occurring on private land. Should the rate of canopy loss trend continue, the Government's ability to maintain canopy cover or offset this loss on public land would be unrealistic. The Government's green cover target cannot be achieved if this continues. Effective regulation is required to protect trees on private and public land that significantly contribute canopy cover.

### 30 Year Plan

The 30 Year Plan for Greater Adelaide recognises the value and importance of urban canopy and green cover setting the objective (Target 5) to maintain and increase green cover. To date however, there the planning reforms set out no clear mechanism to achieve the targets for a 20% increase in canopy and green cover by 2045 in Adelaide Metropolitan Council areas.

## PROPOSED CHANGES TO FACILITATE ACHIEVING A 20% INCREASE IN CANOPY AND GREEN COVER

### Metropolitan Areas - 10 Metre Clearance Exemptions

The clearance exemptions for regulated trees used in an environment of urban consolidation is resulting in the clearance and elimination of larger trees across Adelaide. This is having a major impact as urban consolidation proceeds, as most trees not cleared by the direct development footprint, are or can be removed at anytime because they fall within 10 metres of an approved structure.

The trees which remain protected from this exemption are any species of *Eucalyptus* and the western Australian *Agonis flexuosa* (Willow Myrtle). However, there is also a list of 22 species which are explicitly removed from any protection.

The Resilient East Steering Group believe that the species exemptions have failed to recognise the value of a vast proportion of larger urban trees that are vital for providing the largest and most effective tree canopy cover, shading, amenity and ecosystem services. Whilst these species may not be native, they are valuable to an urban environment and essential for their contribution to maintaining and increasing canopy cover.

The exemptions have no regard for the historic and cultural aspects of regulated sized trees and for the unique environmental attributes and amenity that individual trees provide. Large trees provide habitat perching, nesting and food services for wildlife. For example, large *Pinus radiata* trees provide food cones for yellow tailed black cockatoos that come into Adelaide suburbs, all the way into the city parklands. These birds feed on the radiata cones because their typical food sources such as hakeas and banksias are not present. Whilst radiata pines can be a major weed problem if left unmanaged in rural areas and near forestry operations, they are not significantly invasive in urban built up areas and are valuable in supporting canopy cover and urban biodiversity.

There is considerable concern that Australian native trees that are not *Eucalypts*, are being removed such as *Corymbia* species, and that even some trees registered on the National Trust, Significant Tree Register are not protected.

Any clearance of regulated sized trees should be aimed towards making the best decision about a tree in its immediate environment and this process should not be compromised by wide ranging exemptions that make the tree protection regulations ineffective.

### Tree Damaging Activity Section 3 F(6)

Exemptions under this section are ambiguous and sometimes poorly interpreted resulting in misuse to cause harm to trees which can then result in disfigurement or total removal of trees.

- 3F(6) (a) This exemption enables the 30% cutback of trees without approval. The lack of an approval mechanism means that this work may be undertaken when it is unnecessary and in many cases can be harmful to the tree, ultimately causing greater risk of structural collapse compared with leaving the tree to remain healthy.
- 3F(6)(b)(i) This exemption can lead to disputes about whether a branch pruned from a tree is or was diseased. There is also an undesirable outcome where dead wood that is structurally sound and provides important tree hollows and habitat is removed.
- 3F(6)(b)(ii) This exemption provides a loophole where any branch can be considered to pose a material risk if it is above or near a building

3F(6)(b)(111) This exemption provides a loophole in that any tree could be claimed to be in an area frequently used by people and any branch that could possibly fall on people can be considered as a material risk to such people.

This thinking is now used to justify the removal of regulated sized trees on public school grounds. However, the precautionary removal of healthy trees is counterproductive to the mission of creating a city resilient to climate change, cooler and greener, and signals to the next generation that trees are dangerous and should be removed, rather than educating about how society can co-exist with a living environment, managing risks appropriately and encouraging skills in observation and situation awareness. It is noted that risks from trees and other natural hazards cannot be completely removed.

The Resilient East Steering Group acknowledge that there may be just cause for tree management activity. In an ideal situation we would recommend that approval be sought for all tree damaging activity to ensure that there is a proper decision making process for pruning to occur. As a more practical step, it is recommended that after Regulation 3F(6)(b), that a new clause is added to read: 3F(6)(c) (pruning) that does not jeopardise/detrimentally affect the health and structure of the tree.

#### Tree Protection Zone

The regulations dealing with tree damaging activity listed above focus on above ground branches and canopy matters. There are also many other activities which lead to the loss of trees related to development and other activities that are described in the Australian Standard - Protection of trees on development sites. In the Standard, the "Tree Protection Zone (TPZ) is the principal means of protecting trees on development sites" and deals with activities which can harm the root zone and in addition to the crown area. Currently, the activities restricted in the TPZ under the Standard, have no legal standing under the planning regulations and this is regarded as an area of weakness causing harm to trees to those undertaking development that are not aware or obliged to follow the standard.

It is recommended that the Variation Regulations 2019 be amended to restrict the following activities within the TPZ of regulated trees to protect the health of the root zone and to prevent the unnecessary loss of regulated trees.

- (a) Machine excavation including trenching;
- (b) Excavation for silt fencing;
- (c) cultivation;
- (d) storage;
- (e) preparation of chemicals, including preparation of cement products;
- (f) parking of vehicles and plant;
- (g) refuelling;
- (h) dumping of waste;
- (i) wash down and cleaning of equipment;
- (j) placement of fill;
- (k) lighting of fires;
- (l) soil level changes;
- (m) temporary or permanent installation of utilities and signs, and
- (n) physical damage to the tree [beyond that activities described in 3F(6) (a), (b) and (c).]

### Identifying Regulated Trees through the National Trust Significant Trees Register

The spirit of the Significant tree Regulations when first introduced to Parliament by the late Hon Dr Bob Such MP set out to protect those trees that provide social, environmental and economic benefit from removal.

The legislation was passed in recognition that trees of Significance have an important connection to people and place and therefore warrant conservation.

The current Legislation although helpful, does not protect those trees planted to commemorate men and women whom sacrificed life for Country. The current Legislation also fails to protect those trees that form a spiritual connection to the longest surviving culture in the world and predate European settlement. How did the initial Development Regulations fail to recognise these Significant trees?

The National Trust Significant Trees Register is a nomination merit based process whereby trees of historic, cultural or environmental importance are assessed by a panel of experts. When a tree meets those merits of a Significant Tree, such as those that were planted to commemorate fallen soldiers, the tree is recognised as a Significant Tree and placed on a National Register (<http://trusttrees.org.au/>) .

Every tree listed on the national Trust Significant Tree Register can be assured of its merits and deserves legislative support through the Development Act. The use of this register provides an excellent opportunity to incorporate these trees into the Planning Overlay for Protected trees in the absence of a city wide spatial database of regulated trees. The register also ensures that those Significant trees important to place and community are protected for future generation to value and learn from.

### Recommendations (Tree damaging activity)

Please note the following summary of recommendations in relation to tree damaging activity have been provided with a ratings of:

- 1) Ideal - to describe what is considered necessary to achieve 2045 Canopy and green cover targets identified in the 30 Year Plan
- 2) Priority - to describe a minimum improvement required
- 3) Practical suggestion - to describe an improvement that may not go as far required, but would provide a practical first step.

It is recommended under Section 5 , Insertion of regulations 3A to 3I, 3F—Significant trees that:

- **Ideal:** The regulated tree regulations apply to all tree species and that the exempt species list be removed from the regulations so that all regulated sized trees are protected. There are still ample policy mechanisms for addressing trees that are structurally unsound.
- **Priority:** The 10 metre exemption rule around dwellings and in ground swimming pools be removed and approval required for clearance is considered on a case by case basis in order to protect more trees across the Adelaide metropolitan area as urban consolidation is taking place.

- **Priority:** The recent exemption (schedule 12 (2) (xiii)) to allow removal of all regulated sized trees from public school grounds without application, be changed to require an application and case by case determination.
- Tree Pruning:
  - **Ideal:** Approval be sought for all pruning and other tree damaging activity.
  - **Practical suggestion:** After Regulation 3F(6)(b), that a new clause is added to read: 3F(6)(c) (pruning) that does not jeopardise/detrimentally affect the health and structure of the tree
  - **Practical suggestion:** the use of professional advice (eg registered arborists) to guide the pruning for trees over 3 metres dbh
- **Priority:** Activities restricted within the TPZ in the AS 4970 *Protection of trees on development sites* be reflected in the Variation Regulations 2019 for regulated trees to protect the health of the root zone and prevent the unnecessary loss of regulated trees.
- **Priority:** All trees on the National Trust Significant Tree Register be covered with full protection and recorded on a spatial overlay of regulated trees.
  - It is encouraged that if the National Trust Significant Tree Register is incorporated into the variation regulations then the criteria for registered trees include canopy benefit and potential canopy benefit in addition to trunk girth.
- **Priority:** Regulated trees on sites where new development applications are lodged be captured on the spatial overlay of regulated trees to trigger appropriate assessment pathways.
- **Priority:** The spatial overlay of regulated trees accurately capture trees to be retained on properties under development and designate those trees agreed to be removed as a sub layer.

## Schedule 4—Exclusions from definition of development

### 18—Removal of trees in certain cases

Schedule 4, section 18 provides further mechanisms that remove or provide unintended pathways for the removal of regulated sized trees. Section 18 (1), provides exclusions for trees from the definition of development, thereby allowing them to be removed without application.

- Under Section 18, (1), (a) there is an exemption for two species. The Resilient East Steering Group recommends that this exemption for removal or retention, should not be automatic, but rather merit based.
- Section 18, (1), (c) enables the removal of any tree within 20 metres of a dwelling in a Bushfire Protection Area identified as Medium Bushfire Risk or High Bushfire Risk under the Planning and Design Code to be removed. This exemption is causing the loss of a large number of regulated sized trees without necessarily creating any reduction of bushfire risk. This exemption which was introduced in 2011 is not based on fire science and encourages a poor understanding of fire risk by property owners and occupiers. The Planning Framework must play a vital role in encouraging sensible placement of land divisions and developments away from native vegetation and high fire risk wherever possible, but removing regulated sized trees within 20 metres of a structure can be counter productive. Poorly considered removals can promote the rapid annual growth of tall grasses, shrubs and weed species posing a greater danger than the relatively clear areas underneath the shade of tree canopy.

The key to effective fire prevention and exposure risk is to understand and manage fine surface fuels, midstory vegetation and debris. Residents should be encouraged to learn

about what constitutes ladder conditions where fires may spread into crown fires, and the benefits of having well managed canopy separated from managed surface vegetation, clumped shrubs and separation distances.

This management is best achieved through the existing mechanisms of the Fire and Emergency Services Act (F&ES Act) through a Code of Practice for Fire Preparedness on Private Land, already described in the Act. The 20 metre exemption in bushfire areas is a direct duplication of the F&ES Act management of the 20 metre asset Protection Zones. This duplication can create a false sense of security for those building in fire risk areas, believing that if they clear all the trees they will be safer. They may be more at risk.

There is published material and occasional poor direction to land holders and occupiers which confuses a '*can clear provision*' to a '*must clear directive*', and this has caused considerable removal of regulated and non regulated sized trees across the entire 20 metre asset zone surrounding dwellings.

A better approach is to remove the blanket exemption to clear the trees and instead refer fire related clearance requests for regulated trees in bushfire prone areas to the SA to the councils for assessment. The councils can also seek advice from the Country Fire Service Development Assessment Service as necessary. This reform would ensure the best decision making and would also facilitate engagement between owner/occupiers with Council Bushfire Prevention Officers and the CFS who can best provide property preparedness information.

- 18, 1 (e) enables the removal of any tree that is dead. The Resilient East Councils value the services that dead trees can provide through their perching, and tree hollows for habitat and shelter for marsupial mammals and nesting sites for birds.

Removal or retention of dead trees should be assessed based on considering the structural integrity of the tree in a managed state, together with the benefits it can provide in its immediate environment.

The extent of deliberate and unauthorised attacks and killing of trees through poisons and other direct and indirect fatal interventions on both public and private land is also of extreme concern to councils. Only a small number of these can be proved, and an even smaller number will ever lead to a fine or conviction. The dead tree exemption almost invites abuse of this provision and is encouraging some individuals to cause harm to the tree hoping it will die, so that it can then be removed without any application.

On council land, most councils will not remove a dead tree that has been intentionally killed or a tree that provides biodiversity habitat services. We believe that regulated sized dead trees on private should be restricted from removal without application. They should not be exempt. This reform will encourage landowners to seek to maintain the health of their regulated trees and will discourage illegal killing of trees.

### Recommendation

Under Schedule 4—Exclusions from definition of development, 18—Removal of trees in certain cases

- 18 (1) (a) The exemption to remove the two species listed should be removed and all proposals to remove regulated sized trees should be assessed on the merits of the tree in its location
- 18 (1) (b) The 20 metre exclusion zone in bushfire areas should be removed from the regulations as it duplicates mechanisms already covered by the fire and Emergency Services Management Act. In its place, proposals to remove regulated sized trees in

bushfire areas should be covered by a referral to the CFS development Assessment Service.

- 18 (1) (e)

**Ideal:** The dead tree exemption should be removed from the regulations. In its place, there should be a requirement to seek approval for a merit- based decision which takes into account the structural integrity of a tree (with dead canopy and branch length reduced) and its potential biodiversity services.

**Practical Improvement:** Property owners be required to notify councils when regulated trees die or show signs of serious health decline.

### Cultural changes to be introduced under Best Practice Principles

The Best Practice Design Principles are set at a high level and require explanatory guidelines to describe the outcomes sought and to encourage a culture in community, business and the development sector that places a higher value on existing trees and gardens, as well as the need to restore and increase canopy and green cover, removed as a result of development.

#### Recommendation

A *Best Practice Design Guideline* be prepared to describe how trees and gardens (underpinning canopy and green cover) can be protected as the first priority, and restored and increased as the subsequent priority in all developments. This guideline would discourage the level site approach and look to preserve and design around existing trees and gardens, and seek to integrate new and increased canopy and green cover, including as a part of the building structures such as rooftop and wall gardens.

### Matters for Clarification

The definition of the Significant Tree Overlay and other overlays should be described in the interpretation section of the regulations. If the Significant Tree Overlay is simply a zone where the tree regulations apply, then this should be described. If however the overlay is envisaged to become a spatial record of individually specified regulated trees used to trigger additional approval processes in a ePlanning system, then that would need to be defined as well. It is unlikely that the latter option would be possible in the foreseeable future due to data constraints.

There is often confusion in the community as to the meaning of regulated trees and the sub grouping of significant regulated trees. The draft regulations do not help to improve the understanding with the title of Section 3F being “Significant Trees”. To be logical, technically correct and less confusing, the title should be shown as ‘Regulated Trees’ because both regulated and significant trees are regulated trees. Then the regulations should clearly define significant trees as a subset to regulated trees. The regulations should provide consistent headings for these sections and group all of the regulations in one place, rather than these being scattered throughout different parts of the regulations.

## CONCLUSION

In conclusion, the Resilient East Steering Committee considers that the State Planning Reforms and Planning Design Code will play a critical role to protect trees and achieve the 2045 target for a 20% increase in green cover. The Planning regulations must play a key part in this and will require changes to reverse the continuing loss of trees and canopy cover occurring as a result of urban consolidation and the weakening of significant tree legislation in 2011.

The Resilient East Steering Committee have suggested tangible improvements to the regulations that would support the greater protection of larger regulated sized trees and facilitate the restoration and increase in canopy and green cover as development and urban consolidation continue.

The Resilient East Steering Group would be pleased to discuss this submission with the relevant Planning Reform Team representatives and request that a workshop is arranged to discuss these matters in detail.

Yours sincerely



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