

South Australia

Development (Regulated Trees) Variation Regulations 2011

under the *Development Act 1993*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Development (Regulated Trees) Variation Regulations 2011*.

2—Commencement

These regulations will come into operation on the day on which the *Development (Regulated Trees) Amendment Act 2009* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Development Regulations 2008*

4—Substitution of regulation 6A

Regulation 6A—delete the regulation and substitute:

6A—Regulated and significant trees

- (1) Subject to this regulation, the following are declared to constitute classes of regulated trees for the purposes of paragraph (a) of the definition of *regulated tree* in section 4(1) of the Act, namely trees within the designated area under subregulation (3) that have a trunk with a circumference of 2 metres or more or, in the case of trees with multiple trunks, that have trunks with a total circumference of 2 metres or more and an average circumference of 625 millimetres or more, measured at a point 1 metre above natural ground level.
- (2) Subject to this regulation—
 - (a) a prescribed criterion for the purposes of paragraph (b) of the definition of *significant tree* in section 4(1) of the Act is that a regulated tree under subregulation (1) has a trunk with a circumference of 3 metres or more or, in the case of a tree with multiple trunks, has trunks with a total circumference of 3 metres or more and an average circumference of 625 millimetres or more, measured at a point 1 metre above natural ground level; and
 - (b) regulated trees under subregulation (1) that are within the prescribed criterion under paragraph (a) are to be taken to be significant trees for the purposes of the Act.
- (3) For the purposes of subregulation (1), the designated area will be constituted by—
 - (a) the whole of Metropolitan Adelaide, other than—
 - (i) those parts of the area of the Adelaide Hills Council within the Extractive Industry Zone, the Public Purpose Zone or the Watershed (Primary Production) Zone in the Development Plan that relates to that area; and
 - (ii) those parts of the area of the City of Playford within the Watershed Zone or the Mount Lofty Ranges Rural Zone on the eastern side of the Hills Face Zone in the Development Plan that relates to that area; and
 - (b) any part of the area of the Adelaide Hills Council outside Metropolitan Adelaide that is within a Country Township Zone in the Development Plan that relates to that area; and

- (c) the whole of The District Council of Mount Barker other than those parts of the area of The District Council of Mount Barker within the Industry (Kanmantoo) Zone, the Rural Watershed Protection Zone, the Rural (Mount Barker) Zone, the Rural (Kanmantoo) Zone or the Rural (Kondoparinga) Zone in the Development Plan that relates to that area.
- (4) For the purposes of subregulations (1) and (2), the measurement of the circumference of the trunks of a tree with multiple trunks is to be undertaken on the basis of the actual circumference of each trunk and without taking into account any space between the trunks.
- (5) Subregulations (1) and (2) do not apply—
 - (a) to a tree located within 10 metres of an existing dwelling or an existing in-ground swimming pool, other than a tree within 1 of the following species of trees:
 - Agonis flexuosa (Willow Myrtle)
 - Eucalyptus (any tree of the species); or
 - (b) to a tree within 1 of the following species of trees:
 - Acer negundo (Box Elder)
 - Acer saccharinum (Silver Maple)
 - Ailanthus altissima (Tree of heaven)
 - Alnus acuminata subsp. Glabrata (Evergreen Alder)
 - Celtis australis (European Nettle Tree)
 - Celtis sinensis (Chinese Nettle Tree)
 - Cinnamomum camphora (Camphor Laurel)
 - Cupressus macrocarpa (Monterey Cypress)
 - Ficus spp. (Figs), other than Ficus macrophylla (Morton bay fig) located more than 15 metres from a dwelling
 - Fraxinus angustifolia (Narrow-leaved Ash)
 - Fraxinus angustifolia ssp. Oxycarpa (desert ash)
 - Pinus Radiata (Radiata Pine / Monterey Pine)
 - Platanus x acerifolia (London Plane)
 - Populus alba (White poplar)
 - Populus nigra var. italica (Lombardy Poplar)
 - Robinia pseudoacacia (Black Locust)
 - Salix babylonica (Weeping Willow)
 - Salix chilensis 'Fastigiata' (Chilean Willow, Evergreen Willow, Pencil Willow)
 - Salix fragilis (Crack Willow)
 - Salix X rubens (White Crack Willow, Basket Willow)

Salix X sepulcralis var. chrysocoma (Golden Weeping Willow)

Schinus areira (Peppercorn Tree); or

- (c) to a tree belonging to a class of plants to which a declaration by the Minister under Chapter 8 Part 1 of the *Natural Resources Management Act 2004* applies; or
 - (d) to a tree that may not be cleared without the consent of the Native Vegetation Council under the *Native Vegetation Act 1991*; or
 - (e) to a tree planted as part of a woodlot, orchard or other form of plantation created for the purpose of growing and then harvesting trees or any produce; or
 - (f) to a tree if the tree is located at a site where it is proposed to undertake development that has been approved by the State Coordinator-General for the purposes of the Commonwealth Nation Building Program or the Local Government Infrastructure Program, other than where the site is a site where a State heritage place is situated.
- (6) Subregulation (5)(f) expires on 31 December 2012.
- (7) For the purposes of subregulation (5), the distance between a dwelling or swimming pool and a tree will be measured from the base of the trunk of the tree (or the nearest trunk of the tree to the dwelling or swimming pool) to the nearest part of the dwelling or swimming pool at natural ground level.

Note—

The scheme set out in subregulations (1) to (7) relates to the declaration of trees to be regulated trees or significant trees by regulations under the Act. A tree may also be declared to be a significant tree by the relevant Development Plan, and such a declaration has effect independently from those subregulations.

- (8) For the purposes of the definition of ***tree damaging activity*** in section 4(1) of the Act, pruning—
- (a) that does not remove more than 30% of the crown of the tree; and
 - (b) that is required to remove—
 - (i) dead or diseased wood; or
 - (ii) branches that pose a material risk to a building; or
 - (iii) branches to a tree that is located in an area frequently used by people and the branches pose a material risk to such people,
- is excluded from the ambit of that definition.

5—Variation of regulation 18—Notification of application of tree-damaging activity to owner of land

Regulation 18—delete "significant tree" and substitute:

regulated tree

6—Variation of regulation 32—Public notice categories

Regulation 32(6)—after "*residential code* development" insert:

or a tree-damaging activity

7—Insertion of regulation 117

After regulation 116 insert:

117—Regulated and significant trees—further provisions

- (1) For the purposes of subsection (3a) and (3b) of section 39 of the Act, the qualifications of a person providing an expert or technical report within the contemplation of either subsection is Certificate V in Horticulture (Arbor culture), or a comparable or higher qualification.
- (2) For the purposes of section 42(4) of the Act, the prescribed number of trees is—
 - (a) if the development authorisation relates to a regulated tree—2 trees to replace the regulated tree;
 - (b) if the development authorisation relates to a significant tree—3 trees to replace the significant tree.
- (3) For the purposes of section 42(5), the following criteria are prescribed:
 - (a) the tree cannot be a tree within a species specified under regulation 6A(5)(b);
 - (b) the tree cannot be planted within 10 metres of an existing dwelling or an existing in-ground swimming pool.
- (4) For the purposes of section 42(6) of the Act, the amount payable will be \$75 for each replacement tree that is not planted.

8—Variation of Schedule 3—Acts and activities which are not development

Schedule 3—after clause 16 insert:

17—Removal of trees in certain cases

- (1) A tree-damaging activity in relation to a regulated tree (including a tree that also constitutes a significant tree) if—
 - (a) the tree is within 1 of the following species of trees:
 - Melaleuca styphelioides (Prickly-leaved Paperbark)
 - Lagunaria patersonia (Norfolk Island Hibiscus); or

- (b) the tree is within 20 metres of a dwelling in a Bushfire Protection Area identified as Medium Bushfire Risk or High Bushfire Risk in the relevant Development Plan; or
 - (c) the tree is on land under the care and control of the Minister who has primary responsibility for the environment and conservation in the State; or
 - (d) the tree is on land under the care and control of the Board of the Botanic Gardens and State Herbarium; or
 - (e) the tree is dead.
- (2) For the purposes of subclause (1)(b), the distance between a dwelling and a tree will be measured from the base of the trunk of the tree (or the nearest trunk of the tree to the dwelling) to the nearest part of the dwelling at natural ground level.

9—Variation of Schedule 5—Requirements as to plans and specifications

- (1) Schedule 5, clause A1(a)(iv)—delete "significant tree" and substitute:
regulated tree
- (2) Schedule 5, clause A2(a)(iii)—delete "significant tree" and substitute:
regulated tree
- (3) Schedule 5, clause 1(1)(vc)—delete "significant tree" and substitute:
regulated tree

10—Variation of Schedule 9—Public notice categories

- (1) Schedule 9, clause 13—delete "significant tree" and substitute:
regulated tree
- (2) Schedule 9, clause 25—delete "significant tree" and substitute:
regulated tree

11—Variation of Schedule 10—Decisions by Development Assessment Commission

- Schedule 10, clause 1(1)(v)—delete "significant tree" and substitute:
regulated tree

12—Variation of Schedule 14—State agency development exempt from approval

- (1) Schedule 14, clause 1(b)(vii)—delete "significant tree" and substitute:
regulated tree
- (2) Schedule 14, clause 1(b)(viii)—delete "significant tree" and substitute:
regulated tree
- (3) Schedule 14, clause 1(b)(ix)—delete "significant tree" and substitute:
regulated tree

- (4) Schedule 14, clause 4(b)(vi)—delete "significant tree" and substitute:
regulated tree

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 17 November 2011

No 237 of 2011

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