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Commissioner Alan Hutchings

C/- Legislation Unit

Planning SA

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Dear Commissioner,

Submission on Significant Tree Review

Thank you for the opportunity to meet with you, Chris and De-Anne on this issue.

Without doubt, community concern over urban vegetation, including large trees, is increasing. Even a cursory glance at local suburban newspapers shows the extent of community feeling, with picket lines and demonstrations a common occurrence. One of the most common features of these disputes is that the "objectors" feel powerless in the face of "development" pressure, or they feel outraged at developers "getting away with murder". This is the EDO's experience in dealing with public inquiries over tree clearance in urban areas.

Another emerging community trend is the appreciation of vegetation other than large trees. If you look at so-called "tree planting" programs undertaken by community groups, individuals and governments, you will find that these increasingly include understory species as well as large trees. It is appropriate therefore that any "Significant Tree" controls be expanded to include other types of vegetation, particularly in relation to habitat protection.

The principle points in this submission are aimed at:

1. Improving scope for public participation [Term of Reference 6]
2. Improving the ability for local councils to bring "significant vegetation" within the ambit of the Development Act regime in addition to large trees. [Terms of Reference 1,3 & 5]

Terms of Reference

1) The appropriateness of the 2.5 metres trunk circumference threshold for development applications for tree-damaging activities that currently applies pursuant to regulation 6A of the Development Regulations 1993.

The advantage of a threshold based on circumference size is that it is easy to apply. However, whilst a size threshold may be a reasonable measure of amenity or landscape values, it is not a good measure of ecological or environmental values.

In our submission, the whole concept of "significant trees" needs to be replaced with one of "significant vegetation". This would include the large trees currently covered, but also other urban vegetation that is significant for either amenity or ecological value, regardless of circumference or height.

Because "significant vegetation" is harder to define, it is appropriate that "criteria for significance" be included in the legislation. An appropriate standard would be Schedule 1 of the Native Vegetation Act (with appropriate modification for significant non-native vegetation and for amenity values). A copy of Schedule 1 is attached.

In our submission, the existing regime based on the current circumference and height measures should be modified so that it covers the following:

- 1. All trees over 1.5m circumference**
- 2. All indigenous trees over 4m high**
- 3. All other "significant vegetation" identified by Council and incorporated into lists in the Development Plan**

We also believe that Councils should be encouraged to list the most significant trees in their Development Plan, regardless of whether or not they are "automatically covered" by the size thresholds. This will be important because of our suggestion below that public participation rights be linked to Development Plan listing.

2) The extent of the designated area that currently applies pursuant to regulation 6A.

We believe the area should include all urban or built up areas of South Australia, including country towns.

3) Whether individual Councils should be able to

choose to apply a lower trunk circumference and/or height threshold for their area or portion of their area on a permanent basis through an amendment to regulation 6A.

Yes, in our submission, local communities (through their Councils) should also have the opportunity to apply more stringent tests for bringing "significant vegetation" within the Development Act regime.

4) The experience of Councils and the Development Assessment Commission in administering the significant tree controls since April 2000.

The absence of effective rights of public participation needs to be addressed. Public participation is both a democratic right and also a means of improving decision-making.

5) The process for listing of trees as significant in Development Plans through the preparation of Plan Amendment Reports by Councils.

As set out above, Development Plan listing allows Councils to increase the coverage of the Development Act regime and also identify the most likely areas of public conflict. Our proposal is for listing to be linked to public notification categories (see below).

6.) Initiatives that would improve compliance with the significant tree controls.

Currently all significant tree applications are dealt with as Category 1, meaning there is no public consultation, rights of representation or rights of appeal.

In minor cases (such as trimming), this will be appropriate, however it is not appropriate for applications at the more serious end of the spectrum. Judging the level of community interest in particular applications can be difficult, however the following is suggested as a guide:

- 1. Tree applications involving trees over 1.5m (other than removal): Cat 1**
- 2. Tree applications for removal: Cat 3**
- 3. Tree applications (where tree listed in Development Plan) all applications: Cat 3**
- 4. Significant Vegetation (as listed in a Development Plan) all applications: Cat 3**

The public policy rationale for such a system is that the listing process represents the Council's effort on behalf of the community to protect significant vegetation, therefore the community should have a right to participate in decisions affecting this community asset.

7) The need for further education of developers, landowners, assessment

authorities and the community on the significant tree controls.

Any new regime will only be as effective as the support it receives in the community and the resources and will of enforcement authorities. An education program will be an essential part of any reforms.

8) The relationship between the Native Vegetation Act 1991 and the significant tree controls.

The Native Vegetation Act applies in country South Australia including regional towns and cities, however it is of limited use in built up areas due to the operation of the various exemptions under Regulation 3.

In our submission, the "Significant Vegetation" regime should apply to all built up areas of towns and cities across South Australia.

Thank you for the opportunity to put our views.

Yours faithfully,

Mark Parnell LLB, BCOMM, MRUP

Solicitor

Environmental Defenders Office (SA) Inc.

Native Vegetation Act 1991 (SA)

SCHEDULE 1 - Principles of Clearance of Native Vegetation

1. Native vegetation should not be cleared if, in the opinion of the

Council-

- (a) it comprises a high level of diversity of plant species; or**
- (b) it has significance as a habitat for wildlife; or**
- (c) it includes plants of a rare, vulnerable or endangered species; or**
- (d) the vegetation comprises the whole, or a part, of a plant community that is rare, vulnerable or endangered; or**
- (e) it is significant as a remnant of vegetation in an area which has been extensively cleared; or**
- (f) it is growing in, or in association with, a wetland environment; or**
- (g) it contributes significantly to the amenity of the area in which it is growing or is situated; or**
- (h) the clearance of the vegetation is likely to contribute to soil erosion or salinity in an area in which appreciable erosion or salinization has already occurred or, where such erosion or salinization has not yet occurred, the clearance of the vegetation is likely to cause appreciable soil erosion or salinity; or**
- (i) the clearance of the vegetation is likely to cause deterioration in the quality of surface or underground water; or**
- (j) the clearance of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding; or**
- (k) -**
- (i) after clearance the land will be used for a particular**

purpose; and

(ii) the land is the subject of assessment under section 35 of the Soil Conservation and Land Care Act 1989; and

(iii) according to that assessment the use of the land for that purpose cannot be sustained.

2. In this schedule, unless the contrary intention appears-

"endangered species" means a species of plant for the time being

appearing in Part 2 of schedule 7 of the National Parks and Wildlife Act

1972;

"plant community" means plants of a species indigenous to South Australia

growing in association with one another and forming a group that is

distinct from other plant communities;

"rare species" means a species of plant for the time being appearing in

Part 2 of schedule 9 of the National Parks and Wildlife Act 1972;

"vulnerable species" means a species of plant for the time being

appearing in Part 2 of schedule 8 of the National Parks and Wildlife Act

1972;

"wildlife" has the same meaning as in the National Parks and Wildlife Act

1972.