



WALGA



# Issues Paper Local Government Approaches to Tree Retention

March 2023 – Version for Seeking Legal Advice



# Purpose of This Paper

Declining tree canopy across urban areas in Western Australia is an issue of concern for the community and has garnered significant attention in recent years, resulting in policy changes at both the State and Local Government level to retain and enhance this important community and environmental asset.

In May 2022, WALGA prepared an issues paper to identify barriers to the retention and enhancement of canopy cover and vegetation in urban areas of Western Australia that are within the remit of Local Governments to address through their planning frameworks. This included trees on private land as well as trees on public land where public and private interests may intersect (for example street trees). That paper also considered the broad approach to trees taken by the Western Australian planning framework and how the planning system accounts for the contribution of trees to urban amenity.

This version of the paper has been prepared to seek legal advice on the matters arising from the original issues paper which are of a legal nature. The scenarios and questions have been readjusted for this purpose.

# Table of Contents

1	Overview .....	4
1.1	Background .....	4
2	Scenarios .....	7
2.1	Scenario 1   Tree valuation .....	8
2.2	Scenario 2   Verge assets and development approval .....	10
2.3	Scenario 3   Verge assets and development approval .....	11
2.4	Scenario 4   Earthworks for the purpose of tree removal .....	12
2.5	Scenario 5   Tree removal and 'works' .....	13
2.6	Scenario 6   Tree preservation and liability for Local Governments .....	14
2.7	Scenario 7   Development and the retention of mature trees	15
2.8	Ability for Local Governments to make planning scheme provisions to protect trees on private land .....	16
2.9	Defining and retaining 'significant' trees .....	17
2.10	Subdivision .....	18

# 1 Overview

## 1.1 Background

Trees and other vegetation in urban areas provide significant social, economic, and environmental benefits to the community. The retention and growth of a healthy, resilient and diverse urban canopy is a shared responsibility across State and Local Governments, landholders, industry and the community. In most urban areas across Western Australia there has been a decline in canopy cover, particularly on private land<sup>1</sup>. This loss of cover is a significant issue for Local Governments and impacts local biodiversity, visual amenity, urban heat and public health.

The greatest environmental, aesthetic and cooling benefits of trees are provided by large, mature trees which typically have the largest canopy cover, however across the sector there remains uncertainty as to how such trees can be defined and therefore retained. The term 'significant' is often applied but can have either a general interpretation as a large and therefore ecologically and culturally valuable tree, or a specific, statutorily-defined meaning as a culturally, environmentally or otherwise important and protected tree, typically through registers of significant trees managed by Local Governments. The need for an agreed-upon, sector-wide definition of a 'significant tree' is discussed at part 5 of this issues paper. For clarity, the general term 'canopy tree' is used throughout this issues paper to mean a large mature or semi-mature tree which provides shade and other benefits in urban settings.

State and Local Governments have in recent years made policy and regulatory changes to retain trees in response to declining canopy cover on private land. The 'Better Urban Forest Planning'<sup>2</sup> guide released in collaboration with the Department of Planning, Lands and Heritage, the Western Australian Planning Commission and WALGA in 2018 outlined the scope of the issue and controls available to Local Governments to mitigate canopy tree loss. Since that time, the loss of canopy trees has continued and both State and Local Governments have introduced measures to preserve and enhance urban canopy, including on private land. For example, amendments to the Residential Design Codes (R-Codes) Volume 1 for low-density (single house) development in mid-2021 include additional deemed-to-comply requirements relating to minimum tree provision. Similar provisions are included in the draft Medium Density codes. The R-Codes Volume 2, which guide high density (apartment) development, also make provision for retention of existing vegetation and tree planting to increase canopy. These changes to Western Australia's planning framework recognise that retaining trees on private land is a priority for retaining and growing urban canopy.

Removal of an established canopy tree can result in loss of amenity, reduce habitat for native species and increase urban heat. These impacts cannot be easily nor quickly regained by the planting of immature replacement trees, often in more constrained space and soil condition or even on structure. While the above measures may go some way towards enabling future canopy growth on private land, the R-Codes do not adequately

<sup>1</sup> 2020 Vision (2017) [Where Should All the Trees Go?](#)

<sup>2</sup> Department of Planning, Lands and Heritage, Western Australian Planning Commission and Western Australian Local Government Association (2018) [Better Urban Forest Planning: A guide to support the enhancement of urban forests in Western Australia](#)

incentivise the retention of established canopy trees.

Development approval is not currently required for the removal of canopy trees, and therefore land can be cleared prior to lodging a development application. Under current provisions, trees retained on a development site represent a site constraint that potentially restrict siting and design of a development, for a 3% reduction in deep soil area provision (thus 3% additional site area for building envelope for example). This 3% concession remains consistent, regardless of the number of trees that are retained on site – beyond retaining one tree there is no further incentive to retain additional trees. A simpler and more cost-effective option for proponents seeking to maximise yield, under current policy settings, would be to either a) clear the site of trees prior to lodging an application or b) nominate replacement trees at the rate prescribed in the R-Codes, to maximise developable site area.

In this context, many Local Governments in Western Australia have implemented measures to retain existing trees on private land and enable future canopy growth. Currently a patchwork of approaches towards tree retention are used such as local planning policies and local planning scheme provisions which require the planting of replacement trees where established 'significant' trees are removed during development. Local Governments also facilitate tree retention through Tree Protection Orders, which may be instigated by the Local Government or by landholders, and through using tree valuation systems to ensure funds to disincentivise tree removal or to reestablish lost canopy. Refer to Table 1 for an overview of approaches used by Local Governments in Western Australia.

While Local Governments policy and statutory responses to the issue of tree retention will reflect

their own circumstances and the priorities of their community, there are also benefits in taking a broadly consistent approach. This includes equitable provision of tree canopy across new and established urban areas as well as simplifying the planning system for decisionmakers, proponents and community?

The implementation of measures to retain and increase canopy cover raises several issues for Local Governments, that in turn create uncertainty for decisionmakers, proponents and community. This document identifies issues that Local Governments may encounter in enhancing tree provision and retention on private and public land, and poses a number of questions to be resolved. It is intended the answers to these questions will assist Local Governments in developing and administering consistent and robust measures to retain canopy and form the basis of future advocacy to the State Government and other stakeholders.

Alongside the issues raised in this paper, and the advice ultimately received, Local Governments should consider the resource implications of implementing measures to retain tree canopy. This may include short-term as well as ongoing resourcing, for example, to monitor and enforce compliance. There is also a likelihood of trees being preemptively removed at scale when changes are introduced that may impact the ability of landholders to remove trees without approval. It is recommended that Local Governments carefully consider these matters, and where appropriate seek individual, tailored legal and other expert advice on the impacts of preferred measures.

**Table 1: Local Government tree retention mechanisms**

Mechanism	Key features
<b>Targeted</b> <i>Mechanisms which aim to retain individual trees on a targeted basis</i>	
<b>Significant tree register – voluntary or nonvoluntary</b>	<p>Operate similarly to a Heritage Inventory. Trees can be registered by community members where trees meet specified criteria. Landholder consent is required for voluntary tree registers.</p> <p>Local planning scheme provisions and/or local planning policies may accompany significant tree registers to clarify matters including nomination criteria and consideration of requests for removal.</p>
<b>Tree preservation order</b>	<p>Tree preservation orders may be made by the Local Government or by a landholder, typically where impending works have the potential to damage or otherwise negatively impact existing trees.</p> <p>Local Governments maintain a Tree Preservation Register that lists currently operational orders.</p>
<b>Non-targeted</b> <i>Mechanisms which establish general criteria in order to retain all trees meeting criteria</i>	
<b>Tree amenity valuation</b>	<p>Various tree valuation methods exist to quantify the contribution of trees to amenity, with consideration to variables such as species, condition, rarity, location and aesthetics. Amenity valuations apply to Local Government assets (e.g. verge trees) and may be used to disincentivise tree removal or in the case where trees are removed, fees may be used for replacement planting.</p>
<b>Local planning policy</b>	<p>Local planning policies are a commonly used planning instrument. They enable Local Governments to set clear expectations for development which may impact upon trees. This may include direction to applicants on instances where trees may be removed, what constitutes a significant tree and rates of replacement where trees are removed. Local planning policies may be used to supplement or inform other approaches listed above.</p> <p>Local planning policies enable Local Governments to ensure that local planning frameworks reflect the particular characteristics, needs and values of their communities and local environment.</p>
<b>Local planning scheme provision</b>	<p>Local planning schemes are legal documents that set out controls for how land in the Local Government area can be used and developed, and may include provisions relating to trees within the locality. This may include rates of required tree planting for various forms of development and identification of significant trees.</p>



# 2 Scenarios

This section includes a number of hypothetical scenarios intended to ground common mechanisms used by Local Governments in the Western Australian context.

The scenarios assume current legislative, policy, regulatory and funding settings in Western Australia as of March 2022. This means that the R-Codes Volume 1 and 2 apply to all residential development, and those applications which meet the requirements of Volume 1 are exempt from the requirement for development approval. For low-density residential development, a minimum tree planting requirement of one tree, with a minimum planting area of 2m x 2m applies. Trees greater than 3m in height are required to be retained and provided in communal open space areas. For high-density residential development, tree planting requirements are based on lot size. At the time of this issues paper, the draft Medium Density Codes are still under development, therefore their provisions have not been considered in the scenarios below.

Local Governments in Western Australia currently employ various mechanisms to augment the tree provisions contained within the R-Codes. As such the scenarios below explore the implications of these mechanisms in general, through hypothetical scenarios, rather than applying them to a particular Local Government area.





## 2.1 Scenario 1 | Tree valuation

Various tree valuation methods are used by Local Governments in Western Australia, these include Amenity Valuation of Trees and Woodlands (Helliwell)<sup>3</sup>, Standard Tree Evaluation Method (STEM)<sup>4</sup>, Burnley Method<sup>5</sup>, the Maurer-Hoffman Formula<sup>6</sup> and the Thyer Method<sup>7</sup>. While they differ in the exact variables and formula used to determine value, all methods attempt to quantify the amenity value of trees, with consideration to variables such as species, condition, rarity, location and aesthetics. The reasons for assigning a monetary value to trees are twofold: firstly, the amenity fee can act as a disincentive to remove trees, and secondly, where a decision is made to remove trees, Local Governments may recoup some of the cost associated with replacing lost canopy elsewhere in the locality by collecting the necessary fee. Amenity valuation of trees also acknowledges that in contrast to other Local Government assets, the value of trees appreciates over time. Amenity fees are charged for lost amenity where a tree is removed, in addition to other fees including (1) fee for the physical works to remove the tree, (2) fee for the cost of purchase, planting and maintenance of a replacement tree.

In Scenario 1, an applicant seeks development approval for renovations to an existing single house on the subject site. The plan indicates an existing 12m tall WA Red Flowering Gum located on the road reserve is proposed to be removed to facilitate widening of the existing vehicle crossover to service a proposed double garage. Additional justification provided by the applicant suggests significant site constraints prevent relocation of the crossover to give adequate clearance to the street tree, and as a result request the Local Government remove their asset (the street tree) to facilitate development of the crossover. The Local Government accepts the justification to remove the street tree and notifies the applicant that removal of the street tree will be permitted subject to payment of: (1) the calculated amenity value of the tree (calculated using one of the above-mentioned tree valuation methods), (2) a fee for the physical removal of the tree and (3) a fee for the cost of a replacement tree to be planted on the verge, including future maintenance.

---

<sup>3</sup> See Helliwell (2008) [Amenity valuation of trees and woodlands](#)

<sup>4</sup> See Flook (1996) [A Standard Tree Evaluation Method: STEM](#)

<sup>5</sup> See Moore (no date) [Amenity tree valuation: a revised method](#)

<sup>6</sup> See City of Melbourne (no date) [Tree Valuation Fact Sheet](#)

<sup>7</sup> See Thyer (2002) [Introduction to the Thyer Tree Valuation Method](#)



## Questions

- a) Assuming the tree in question is in good health what matters would prevent the Local Government from authorising the removal of the tree from the verge?
- b) What existing legislative, regulatory or other mechanisms allow Local Governments to charge and collect a fee from a landholder to account for the lost amenity value that would result from the removal of the tree from Local Government owned or managed land, above and beyond the removal and replacement cost? What are the advantages and disadvantages of each mechanism?
- c) If these mechanisms include conditions of development approval, what is the preferred wording of a condition of development approval?
- d) Can fees charged to the landholder include costs to support and maintain the new verge tree, and what limits exist on these fees?
- e) At what point can the Local Government value the amenity of the tree in order to issue the fee? And, what actions can the Local Government take if it suspects that the amenity value has been negatively affected due to actions of the landholder (e.g. poisoning, excessive pruning)? What actions can the Local Government take to prevent landholders from affecting the amenity value of the tree before it is valued?
- f) Can the Local Government charge the landholder for any costs associated in identifying the amenity value of the tree, such as to engage a third party specialist?

## 2.2 Scenario 2 | Verge assets and development approval

In Scenario 2, similar to the above, an applicant submits a development application to the Local Government with the site plan proposing a vehicle crossover to be located over an existing tree on the road reserve, with the tree marked for removal on the submitted development plans. Upon lodging the development application, the Local Government requests amended plans demonstrating retention of the street tree, and advises the applicant that the application will not be supported due to the inappropriate location of the vehicle crossover, and does not accept the application for assessment. The Local Government is of the view that removal of the street tree is 'avoidable' and therefore that the application does not comply with 5.3.5 of R-Codes Volume 1.

### Questions

- a) What criteria would the applicant need to satisfy to enable the Local Government to determine that removal of the street tree is 'unavoidable' in accordance with 5.3.5 of R-Codes Volume 1?
- b) Can a Local Government establish these criteria in a local planning policy or other instrument to supplement the R-Codes?
- c) If the Local Government deems that removal of the street tree is avoidable, and the applicant meets all other planning requirements, can the Local Government reasonably refuse to accept the application for assessment based on potential non-compliance with cl. 5.3.5 (C5.3)?
- d) If the tree is poisoned or otherwise interfered with leading to irreversible damage or death of the tree after the Local Government refused to accept the application, what course of action is available to the Local Government to charge the applicant for tree loss and replacement?



## 2.3 Scenario 3 | Verge assets and development approval

In Scenario 3, the landholder has obtained development and building approval for a single house with double garage, and has commenced construction of the dwelling prior to obtaining crossover approval. During construction, the landholder submits an application for crossover approval with the Local Government indicating that the proposed crossover provides access to the newly constructed double garage and requires removal of one street tree. The location of the double garage, the proposed crossover location and the need to remove the verge tree was not identified by the Local Government during the development assessment or building permit application process. Refusing to approve the proposed crossover would result in the new dwelling's garage not being able to be accessed by vehicle.

### Questions

- a) Can the Local Government reasonably refuse the crossover application on the basis that requiring the removal of its asset (the tree) is unacceptable, if the development has already been approved and building permit issued?
- b) Can the crossover application be conditionally approved with a requirement for the applicant to pay a fee to the Local Government to value, remove and replace the existing street tree, maintain a new street tree, and charge for the lost amenity value?
- c) Can the Local Government require that all trees are identified on plans for building and planning applications to ensure consideration for trees on road reserves during assessment, to prevent such a situation arising in future? What other mechanisms are available to Local Governments to prevent such a scenario?

## 2.4 Scenario 4 | Earthworks for the purpose of tree removal

In Scenario 4, the landholder has a large tree in the front setback area of the subject site (their land), which they wish to remove and landscape for non-intrusive alternative uses such as a children's play area or vegetable garden or other alternative use not requiring development or any other approval from the Local Government. The tree is mature with an extensive canopy and root system. The landholder has received advice from a tree surgeon that soil to a depth of at least half a metre will need to be removed to remove the roots of the tree from the property.

### Questions

- a) Does the removal of the tree constitute development in accordance with the definition of development provided in the *Planning and Development Act 2005*, which includes '*the carrying out on the land of any excavation or other works*' [emphasis added]?
- b) How is the term "any excavation" to be defined by planning authorities and decision makers in this scenario, and what matters would need to be satisfied to constitute tree removal as "development" under the Act?
- c) In instances where tree removal does meet the definition of "development" under the Act, does the Act automatically require a landholder to submit a development application prior to seeking development approval to remove the tree or does the Local Government need to amend its local planning scheme or other instrument to introduce provisions that require a development approval?



## 2.5 Scenario 5 | Tree removal and ‘works’

Scenario 5 is similar to the above, however in this case the landholder has enlisted the services of a tree surgeon and intends to have the tree removed at the base, leaving the stump at ground level and root system below, meaning that earthworks are not required to remove the tree. The removal of the tree is likely to have a substantial negative effect on the amenity of the immediate neighbourhood and streetscape. The landholder intends to use the area for non-intrusive alternative uses such as a children’s play area or vegetable garden or other uses not requiring Local Government approval.

### Considerations

- a) Does removal of the tree constitute development in accordance with the definition of development provided in the *Planning and Development Act 2005*, which includes ‘*the carrying out on the land of any excavation or other works*’ [emphasis added]?
- b) How is the term “other works” to be defined by planning authorities and decision makers in this scenario, and what matters would need to be satisfied to constitute tree removal as “development” under the Act? Would height, species and canopy extent be relevant considerations?
- c) Could the above criteria (height, species, canopy extent) be used to identify trees that contribute amenity and therefore whose future removal may constitute ‘other works’? What other criteria should be used by Local Government to identify trees that contribute amenity?

## 2.6 Scenario 6 | Tree preservation and liability for Local Governments

In Scenario 6, a resident (Resident Y) has applied to have a Tree Preservation Order (TPO) made over a large tree located on land belonging to another resident (Landholder X). Landholder X does not consent to the TPO being made and as a result, the TPO is required to be considered by the Council of the Local Government, rather than considered by officers under delegation. In preparing its report to Council, the Local Government's administration reviews the ecological, social and historical significance of the tree, its rarity and the health of the tree in accordance with the Local Planning Scheme and Policy provisions relating to TPOs.

### Questions

- a) In the event the subject tree met all criteria to be deemed worthy of protection, and a TPO was made, would the Local Government be liable to pay damages to Landholder X or other affected parties in the event the tree later caused damage (e.g. structural damage as a result of root invasion)?
- b) In the event a qualified arborist's report indicates that the health of the tree at the time of assessment were failing, could the Local Government reasonably make the TPO, if the tree were deemed worthy of retention on the basis of other criteria (e.g. social, environmental, historical significance)?
- c) Assuming the TPO was made in b) above, would the Local Government be liable to pay damages to Landholder X or other affected parties in the event the tree later caused damage that could be linked to the poor health of the tree (e.g. limb fall causing injury to person or damage to property)?
- d) Could the insertion of wording into a Local Government's Scheme or Local Planning Policy protect the Local Government from liability in the above scenario? How could such provisions be appropriately worded to minimise or eliminate any potential liability risk to the Local Government?
- e) If a Local Government issues a TPO that negatively affects the development potential of a site, for example further dwellings on the site could not be constructed, could the affected landholder bring a case for damages against the Local Government?
- f) If yes in (e) above, what actions should a Local Government take to prevent the likelihood of such cases being successful?



## 2.7 Scenario 7 | Development and the retention of mature trees

In Scenario 7, a landholder applies for approval from the Local Government to develop three grouped dwellings. The subject site currently contains a single house which is to be demolished. The Local Government in assessing the application in accordance with R-Codes Volume 1 notes that a mature tree located in the rear portion of the subject site could be retained as part of the development without requiring modification to the design. The Local Government requests the applicant to submit a revised site plan demonstrating retention of the existing tree. The retained tree with 2m x 2m tree protection zone shown on the amended site plan enables compliance with cl. C2.2 of R-Codes Volume 1 for the rear grouped dwelling, with the other two grouped dwellings showing new trees to be planted and 2m x 2m tree growth zones to achieve compliance. A condition is placed upon the development approval requiring the existing tree as shown on the development plans to be retained.

### Questions

- a) How should such a condition be worded to ensure the ongoing viability and survival of the tree?  
Options may include:
  - i. A condition stating that removal or pruning of the tree to be retained will require approval in writing from the Local Government
  - ii. A condition requiring notification be placed on the title that the tree be retained.
  - iii. A condition stating that the existing tree must be protected through the development process in accordance with AS4970.
- b) At some future point following completion of the construction of the dwelling on the subject site, if the landholder removed the subject tree in contravention of the condition of development approval, what compliance action can the Local Government take?
- c) In the event the existing tree caused damage (for example structural damage as a result of root invasion or limb fall) to an adjoining property or to the property containing the retained tree, at some future point after construction of the three grouped dwellings, would the Local Government be liable to pay damages to the affected landholder/s?
- d) What actions can the Local Government take to limit the extent of any potential legal liability that may result from property damage caused by the existing tree?
- e) Is the Local Government responsible in any way for the planting or maintenance of the new trees required to be planted as per the site plans and development approval?
- f) If a lot is zoned to support three grouped dwellings, yet the number of dwellings would result in clearing mature tree(s), can the Local Government refuse the application and request that the development includes fewer dwellings to retain the existing trees?
- g) Alternatively, what options are available to the Local Government to seek retention of the tree if identified during subdivision referral assessment that the tree is worthy of retention?

## 2.8 Ability for Local Governments to make planning scheme provisions to protect trees on private land

The *Planning and Development Act 2005* at Schedule 7 – Matters which may be dealt with by a planning scheme, includes at cl. 4(2) – *the conservation of the natural environment of the scheme area including the protection of natural resources, the preservation of trees, vegetation and other flora and fauna, and the maintenance of ecological processes and genetic diversity* [emphasis added].

The above indicates Local Governments may make local planning scheme provisions with the intent to ‘preserve trees.’

### Questions

- a) Clause 4(2) of the Act does not specify any criteria as to which trees may or may not be preserved through a local planning scheme. Therefore, can a Local Government prepare a planning scheme under which all trees are protected, or a very broad criteria of trees are protected?
- b) Similarly, could a Local Government prepare a local planning scheme where preservation is achieved by defining that the removal of trees is considered ‘development’ and therefore requires development approval?
- c) How could a standard scheme provision be worded for tree retention for inclusion in the Planning and Development (Local Planning Schemes) Regulations 2015?



## 2.9 Defining and preserving 'significant' trees

Local Governments variously define significant trees in their local planning frameworks for the purpose of maintaining Significant Tree Registers. To date there is no agreed-upon, sector-wide definition of a 'significant' tree, nor what protection may be offered to such trees preventing their removal.

State Planning Policy 7.3 R-Codes Volume 2 (SPP7.3) and the draft Medium Density Code define a significant tree as follows:

- Healthy specimens with ongoing viability; and
- Species is not included on a State or local area weed register; and
- Height of at least 4m; and/or
- Trunk diameter of at least 160mm, measured 1m from the ground; and/or
- Average canopy diameter of at least 4m.

The above criteria are, at the time of drafting this issues paper, the most current definition of a tree which could be considered worthy of retention within the Western Australian planning framework. While SPP7.3 defines a significant tree, there are no parameters in this document or others which would prohibit or restrict removal of such trees, as in Significant Tree Registers.

There is precedent in other parts of Australia for significant trees to be defined and protected. South Australia for example differentiates between 'regulated' and 'significant' trees in the Development Act 1993, with approval required for anything beyond maintenance pruning. Similarly, the Australian Capital Territory regulates removal or damage of both 'registered' trees, which must be individually nominated and 'regulated' trees, which are regulated upon meeting minimum criteria for protection. A recent analysis of tree protection mechanisms across Australia rated Western Australia as having the weakest protections for trees on private land<sup>8</sup>.

A further issue is that trees which are not deemed significant on the basis of immaturity (e.g. failing to meet height or circumference criteria) are not afforded protection. A possible consequence of this is that new or replacement trees are at high risk of removal in the first years of establishment, leading to a situation where adequate canopy (and its associated benefits) cannot be established.

## Questions

- a) Given that SPP 7.3 (Volume 2) and the draft Medium Density Code use the five criterion listed above to define a significant tree, would it be advisable for Local Governments to also use these criteria to define a significant tree within its local planning framework? If not, what criteria should a Local Government use?
- b) What additional criteria could a Local Government include to effectively capture maturing trees that may not yet meet these criteria?

---

<sup>8</sup> Conservation Council of South Australia (2021) Comparison of Australia's Tree Laws [Report: Comparison of Australia's Tree Laws \(2021\) - Conservation Council SA \(conservationsa.org.au\)](#)

## 2.10 Subdivision

Both structure planning and piecemeal infill subdivision present challenges for tree retention. Historical practices of subdivision in Western Australia in which significant trees or copses were identified for retention have been superseded by bulk earthworks that typically involve wholesale clearing prior to commencing the structure planning process.

Similarly, drainage and site works conditions as set out in the Western Australia Planning Commission's (WAPC) *Model Subdivision Conditions Schedule*<sup>9</sup> requiring the land to be filled, stabilised, drained and/or graded result in trees being removed to meet such conditions. It is also the case that land is often cleared of native vegetation to obtain the fill for these subdivisions. Environmental Advice Note Ena5<sup>10</sup> pertains to the retention of trees, however currently no conditions enable allowances or concessions for retaining trees.

### Questions

- a) What changes would need to be made to the state planning framework and/or a local planning framework to ensure that existing stands of significant trees, or significant individual trees can be retained within the structure planning and subdivision planning assessment processes?
- b) In some instances, trees may be removed to satisfy requirements that land be filled, stabilised and drained and/or graded to clear conditions of subdivision approval. Where trees have been identified by the Local Government as worthy of protection, how could a model subdivision condition be worded to require existing trees to be retained?
- c) Similarly, how could a model subdivision condition be worded which would enable fill, stabilisation and drainage requirements to be flexibly applied to enable retention of existing trees?

<sup>9</sup> Western Australian Planning Commission (2021) [Model Subdivision Conditions Schedule](#)

<sup>10</sup> Western Australian Planning Commission (2021) [Model Subdivision Conditions Schedule](#), p.28

## 2.11 Bushfire

Pruning and/or removal of vegetation is considered an effective way to reduce bushfire hazards surrounding development, particularly for asset protection zones (APZs) on private landholdings on the rural/urban interface and peri-urban development.

The *Bushfire Risk Treatment Standards 2020* allow landholders to manage (prune or remove) vegetation within a 20-metre radius of a habitable building on their property or that of an adjoining landholder, with their consent, known as the risk treatment area. At cl.6 (4) the owner or occupier of land that is a risk treatment area must not prune or remove a tree that is listed on a register of significant trees under a local planning scheme. While some Local Governments do maintain a register of significant trees under the local planning scheme, other mechanisms may be used in their place to retain significant trees.

### Questions

- a) Where removal of significant trees are considered 'works' (refer section 2.5 above), a development approval may be required by the Local Government. Do the *Bushfire Risk Treatment Standards 2020* override the requirement for development approval?

