



WALGA



Issues Paper

Local Government Approaches to Tree Retention

May 2022

Tree retention

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.

The purpose of this issues paper is 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 includes trees on private land as well as trees on public land where public and private interests may intersect (for example street trees).

This paper also considers the broad approach to trees taken by the Western Australian planning framework and whether fundamental elements of the planning system fail to adequately account for the contribution of trees to urban amenity, and what scope may exist for this to be addressed through Local Government planning as well as changes to the State planning framework.

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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, landowners, industry and the community. In most urban areas across Western Australia there has been a decline in canopy cover, particularly on private land¹. 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' will be 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'² 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. Amendments to the Residential Design Codes (R-Codes) Volume 1 for low-density (single house) development in mid-2021 for example include additional deemed-to-comply requirements relating to minimum tree provision, and 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.

Removal of an established canopy tree can result in loss of amenity, reduced habitat and increased urban heat which cannot be easily nor quickly regained by the planting of immature replacement trees in often more constrained space and soil condition or even on structure. While the above measures go some way towards enabling future canopy growth on private land, the R-Codes do not adequately incentivise the retention of established canopy trees. Development approval is not currently required for the removal of canopy trees, and therefore land can be entirely cleared prior to lodging a development application. Under current provisions, existing trees on a

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

² 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](#)

development site represent a site constraint which would need to be accommodated through 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, which 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. Present policy settings therefore offer insufficient incentive to retain trees.

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 canopy tree retention are used in the absence of a consistent approach which may be achieved through greater Local Government collaboration or through the State planning framework. Interventions include local planning policies and local planning scheme provisions which for example require the planting of replacement trees where established ‘significant’ trees are removed during development. Local Governments also facilitate tree retention through Section 70A notifications on property titles and Tree Protection Orders, which may be instigated by the Local Government or by landowners, and through tree valuation systems to ensure funds to disincentivise tree removal or to reestablish lost canopy.

While Local Governments will develop policy and legislative responses to the issue of tree retention that 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 and reducing red tape in accordance with the State’s planning reform agenda.

It has become apparent that the implementation of measures to retain and increase canopy cover raise several issues for Local Governments, and in turn can 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 by WALGA.

1.2 Approach

The WALGA Urban Forest Working Group, which comprises representatives from 30 metropolitan and regional Local Governments, formed a Tree Retention Sub-Committee in 2021 to investigate and develop a consistent approach to retention of trees on private land across Western Australia.

The Sub-Committee identified a need for advice on the mechanisms that can be used by Local Governments to retain trees on private land, their efficacy in different circumstances, and their respective legal, risk and liability implications. This issues paper is a first step towards scoping the extent of matters arising as a result of tree retention methods and will be used as the basis for obtaining advice on these matters and moving forward with more consistent approaches to tree retention across the sector. This work will also form the basis of a revised WALGA Advocacy Position to inform future advocacy to the State Government and other stakeholders to ensure protection and enhancement of the State’s urban forest.

2 Scenarios

This section includes a number of hypothetical scenarios for discussion. These are intended to ground common mechanisms used by Local Governments in the Western Australian legislative and policy context and tease out the issues which may arise for Local Governments and seek practical responses that can be applied in each instance.

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)³, Standard Tree Evaluation Method (STEM)⁴, Burnley Method⁵, the Maurer-Hoffman Formula⁶ and the Thyer Method⁷. 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.

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 applicant justification to remove the street tree and notifies the applicant that removal of the street tree will be permitted subject to payment of the calculated amenity value of the tree (calculated using one of the above-mentioned tree valuation methods), a fee for the physical removal of the tree and a fee for the cost of a replacement tree to be planted on the verge.

Considerations

- a) Assuming the tree was in adequate health and not on a weed register, what matters would constitute 'reasonable justification' for removal of the tree?
- b) Can the Local Government reasonably collect a fee for removal of trees located on the Local Government's property which exceeds the cost for removal works and replacement trees, to consider the amenity value of the removed tree, by any of the methods listed above?
- c) Which valuation methodology is most suitable for the Western Australian context, and if Local Governments are to apply a methodology, should this be standardised across Western Australia?
- d) Should the valuation include maintenance costs for establishment of successful trees and if so, how many years' maintenance const can the Local Government reasonably charge for?

³ See Helliwell (2008) [Amenity valuation of trees and woodlands](#)

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

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

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

⁷ See Thyer (2002) [Introduction to the Thyer Tree Valuation Method](#)

- e) Is a condition upon development approval requiring payment of the calculated amenity fee an appropriate mechanism to collect the fee?
- f) If so, how might such a condition be worded to ensure the Local Government is adequately compensated for the removal of its asset in accordance with its calculated value?
- g) What restrictions, if any, apply to the storage and use of the funds collected for the amenity value of the tree?
- h) How can the Local Government ensure fairness, reasonableness and accountability in collection and use of the funds from amenity valuation?
- i) Were the tree to be poisoned or otherwise interfered with leading to irreversible damage/death of the tree after issuing the development approval but before payment of the abovementioned fee to satisfy an appropriately-worded condition, what course of action would be available to the Local Government? Would the Local Government still be able to collect the calculated amenity fee, and could any further penalty reasonably be applied?
- j) Were the applicant to lodge an appeal with the State Administrative Tribunal to have the abovementioned condition removed, which previous decisions of the Tribunal or other courts would inform the Tribunal's decision?
- k) What other matters would likely be considered by the Tribunal?
- l) As an alternative, could the Local Government modify (reduce) the required clearance between the crossover and the street tree and require permeable paving to accommodate the street tree and crossover. How could such a modification be established in Local Government engineering standards?

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 advising that the application will not be supported due to the inappropriate location of the vehicle crossover. 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.

Considerations

- a) What criteria would the applicant need to satisfy to deem removal of the street tree 'unavoidable' in accordance with 5.3.5 of R-Codes Volume 1?
- b) Given the Local Government deems removal 'avoidable' can the Local Government reasonably refuse the development application on the basis of removal of the tree?
- c) What course of action is available to the applicant, should they not wish to resubmit amended plans?
- d) Were the tree to be poisoned or otherwise interfered with leading to irreversible damage/death of the tree after the Local Government refused to accept the application, what course of action would be available to the Local Government?

2.3 Scenario 3 | Verge assets and development approval

In Scenario 3, the landowner 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 landowner submits an application for crossover approval with the Local Government indicating the proposed crossover, providing access to the already-constructed double garage, is located such that it would require removal of one street tree. The location of the double garage and proposed crossover location was not raised by the Local Government during the development assessment or building permit application process. Refusing to approve the proposed crossover would result in the dwelling not being able to be accessed by vehicle.

Considerations

- a) Can the Local Government reasonably refuse the crossover application on the basis of requiring the removal of its asset (the tree)?
- b) Assuming the Local Government is one which collects an amenity fee for removal of street trees, could the Local Government require payment of a calculated amenity fee for removal of the street tree?
- 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 landowner has a large tree in the front setback area of the subject site (their land), which they wish to remove. The tree is a mature specimen with extensive canopy and root system, and the landowner has received advice from a tree surgeon that soil to a depth of approximately 0.6m will need to be removed to remove the roots of the tree from the property, optimising future use of the space for landscaping. The landowner does not intend to commence further works on their property once the tree is removed, and would simply 'make good' and grass over the area of land left by the tree at this time.

Considerations

- a) In the absence of any other works being undertaken on the subject site, 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) Is the answer to a) dependent on the extent of earthworks required to facilitate removal of the tree (in this case 0.6m)?
- c) Assuming the answer to a) above is affirmative, can the Local Government therefore reasonably require the landowner to lodge a development application for the removal of the tree?

2.5 Scenario 5 | Tree removal and ‘works’

Scenario 5 is similar to the above, however in this case earthworks are not required to remove the tree. The landowner 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. As above, the landowner does not intend to commence further works on their property following the tree removal.

Considerations

- a) In the absence of any other works being undertaken on the subject site, does the removal of a 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) The definition of ‘development’ as it is found in the Planning and Development Act 2005 takes into consideration primarily, works on the land which would give rise to amenity impacts either during or after the works take place, for example temporary amenity impacts such as noise, vibrations, dust associated with physical construction as well as works which could result in longer term changes in amenity such as construction of a boundary wall, shed etc. Given the visual impact of trees in urban environments and their contribution to both residential and neighbourhood amenity, it follows that the removal of a mature tree could have the requisite amenity impact to be within the scope of planning considerations and in this case deemed ‘other works.’ Considering this, does the removal of a mature tree constitute ‘other works’ and therefore can be classified as ‘development’ in accordance with the Act?
- c) What case law examples exist where what can reasonably be considered ‘other works’ under the Planning and Development Act 2005 has been tested?
- d) Is the answer to a) dependent on the characteristics (for example height, species, canopy extent) of the tree to be removed?
- e) Conversely, could the above criteria reasonably be applied to determine trees which contribute amenity and therefore whose removal would constitute ‘other works?’

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 (Landowner X). Landowner 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.

Considerations

- 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 Landowner 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 indicated 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 Landowner 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 the liability risk to the Local Government?

2.7 Scenario 7 | Development and the retention of mature trees

In Scenario 7, a landowner applies for approval from the Local Government to develop 3 grouped dwellings on the subject site. 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 retained tree with 2m x 2m tree protection zone shown on an amended site plan therefore enables compliance with Clause 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 tree as shown on the development plans to be retained.

Considerations

- a) How could such a condition best be worded to ensure the ongoing viability and survival of the tree?
Options 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 tree to be retained should 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, were the landowner to remove the subject tree in contravention of the condition of development approval, what recourse/s is/are available to the Local Government?
- c) In the event the subject tree to be retained, at some future point after construction of the 3 grouped dwellings, 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, would the Local Government be liable to pay damages to the affected landowner?
- 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?
- e) If yes in answer to the above, how could such provisions be appropriately worded to minimise or eliminate the liability risk to the Local Government?
- f) For grouped dwellings where new trees are to be planted, where does the responsibility rest for the initial planting of the tree, and then over the life of the tree for its continued survival?
- g) 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 reasonably refuse the application and request that the development includes fewer dwellings in order that the trees be retained?

3 Issues

This section poses questions relating to the current policy and legislative framework in Western Australia and its capacity for tree provision and retention.

As above, the issues are discussed in the context of current legislative, policy, regulatory and funding settings in Western Australia as of March 2022. Further analysis of the issues raised can provide further direction for future advocacy for trees on private land in Western Australia through policy and legislative mechanisms



3.1 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 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.’

Considerations

- 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 removal of trees as ‘development’ and requiring development approval to do so?
- c) How could a standard scheme provision be worded for tree retention for inclusion in the Planning and Development (Local Planning Schemes) Regulations 2015?

3.2 Amenity impacts of tree removal

Consideration of amenity is a key principle underpinning urban and regional planning. It is well understood that trees deliver positive amenity impacts through shade and cooling, habitat provision and contributing to neighbourhood character and sense of place. However at present, the amenity benefits of trees and the impact of their removal are not accounted for within the Western Australian planning system. The key document guiding residential development in Western Australia, the R-Codes, considers in detail how various forms of improvement on land contribute to or detract from amenity for occupants, neighbours and the immediate locality. Provisions relating to lot boundary setbacks, street setbacks, building height and outbuildings for example all consider the amenity impact of these building features on adjoining or neighbouring properties.

For example, design principle (P3) for outbuildings indicates outbuildings should not detract from the streetscape or the visual amenity of residents or neighbouring properties. Embedded in this design principle is an acknowledgement that the presence of an outbuilding can have a deleterious impact on residential amenity and therefore that it is reasonable to intervene to an extent to minimise this impact on amenity, balanced with the right of the landowner to use their land as they see fit.

While the presence of outbuildings can have a negative impact on amenity, the presence of canopy trees can have a positive impact on amenity. Given the Western Australian planning system acknowledges and attempts to mitigate elements of a place which may detract from amenity, the following considerations are pertinent.

Considerations

- a) Is there scope within the Western Australian planning system, through the R-Codes or other legislation or policy, to make provisions which respond to elements of the built environment which have positive impacts on amenity, in addition to those which have negative impacts on amenity? Specifically, where the positive impact of trees on amenity can be accounted for within the planning framework.
- b) Considering the above, whether amendment of the *Planning and Development Act 2005* to specifically reference tree removal as a form of development could reasonably occur to better reflect the impact of trees and their removal in urban environments.

3.3 Private Property Rights

The value of tree retention, and the need for Local and State Governments to intervene to deliver this public good must be balanced against the rights of landowners to make decisions about and enjoy the use of their private property. While canopy trees may be planted and have roots wholly or primarily in a privately-owned space, trees have impact and value in public space. A large tree planted in a front yard impacts not only the owner, but neighbours who receive shade and/or aesthetic value from the tree, wildlife which may live and feed in the tree, as well as the overall visual impact of the tree and its contribution to the streetscape. These contributions to the community as a whole are a public good which governments have a responsibility to deliver, increasingly so as the shade and cooling benefits of trees are needed to combat urban heat. Nevertheless, mechanisms to prevent removal of trees from private land have the capacity to infringe upon private property rights to the extent they impact upon land values, development potential as well as landowner use and enjoyment of the land.

The State Government in November 2021 adopted a Private Property Rights Charter for Western Australia⁸ with the aim of ensuring proper regard be given to the rights of private landowners. The Charter applies to State Government in relation to actions which may adversely affect private property rights, and Local Government are also encouraged to comply. The following principles from the Charter are relevant to the retention of trees on private land.

- a) Providing a community benefit. *Government action which adversely affects private property rights in land should endeavour to benefit the community or otherwise advance the public interest. Public officials should only take government action which adversely affects private property rights in land when they consider it to be justified, having regard to the appropriate balance between the public interest to be advanced by the action and the public interest in the protection of private property rights in land.*
- b) Considering alternatives. *Public officers should consider whether there are any alternative means by which the relevant community benefit or public interest could be advanced in a manner which avoids or reduces adverse effects on private property rights in land.*

Whilst canopy trees provide benefit to the owner of the lot through shade and amenity, it is the benefits they provide at the street and neighbourhood scale, to the community more broadly, which Local Governments are concerned with. Public goods such as reduced urban heat, rainwater absorption, streetscape character, neighbourhood amenity and increased biodiversity which accrue not only to the individual landowner but to streets and neighbourhoods collectively, and it is these goods that Local Governments attempt to protect and enhance through tree retention. Whilst alternatives such as planting trees on road reserves and other public land may offer similar community benefits, the contiguous canopy that can be delivered through public and private plantings offers greatest cooling, aesthetic and habitat benefits. In addition, equitable access to the benefits of tree canopy can best be provided through public and private tree retention, avoiding a situation where areas with less available public land for planting (for example newer subdivisions with smaller road reserves) have less canopy cover.

⁸ Government of Western Australia (2021) [Private Property Rights Charter for Western Australia](#)

3.4 Defining and retaining 'significant' trees

Local Government 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 existing 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 land⁹.

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.

Considerations

- a) How can trees approaching significance be accounted for within the planning framework?
- b) Is the definition above appropriate for use by the sector? Is the above criteria for a significant tree appropriate for use sector-wide, and for embedding protection for trees that have high amenity value in the state planning framework?

⁹ Conservation Council of South Australia (2021) Comparison of Australia's Tree Laws [Report: Comparison of Australia's Tree Laws \(2021\) - Conservation Council SA \(conservationsa.org.au\)](#)

3.5 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 earthworking which typically involves 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 Schedule¹⁰ requiring the land to be filled, stabilised, drained and/or graded result in trees being removed to clear such conditions. It is also the case that land is often cleared to obtain the fill for these subdivisions. Environmental Advice Note Ena5 pertains to the retention of trees, however currently no conditions enable allowances or concessions for retaining trees.

Considerations

- a) If a tree is identified as 'significant' under the Local Government's local planning scheme, what level of regard would the WAPC have to give to that statutory protection in subdivision assessment?
- b) How could a model subdivision condition be worded to require and/or allow for concessions to be made/a flexible approach taken to fill, stabilisation and draining to better enable tree retention?

¹⁰ Western Australian Planning Commission (2021) [Model Subdivision Conditions Schedule](#)

3.6 Leaving space for trees

This paper has considered at length the issues faced by Local Governments in their attempts to maintain and grow urban canopy through tree retention. Local Governments in Western Australia can be broadly categorised into two types in this respect – those Local Governments with reasonable canopy cover who seek measures to prevent further loss of canopy cover as a result of development, and those Local Governments with identified shortfalls in canopy cover who must first substantially grow their urban forest, both on public and private land. Local Governments smaller in geographical size with good levels of resourcing can have higher order, more resource-intensive responses to the issues such as mapping vegetation assets and monitoring compliance with tree-related conditions of development approval. These higher order approaches are much harder to achieve due to the volume of land and often smaller and less specialised teams for the latter Local Governments.

Whilst the focus of this issues paper is tree retention, achieving healthy, equitable provision of urban canopy and its associated benefits requires substantial additional planting and growth of new trees. The review of key documents within the Western Australian planning system presents an opportunity to advocate for how better to leave space for trees:

- a) When space allows, many people make the choice to plant trees and establish gardens. The open space requirements of the R-Codes Volume 1 do not impose limitations on the extent of hardstand for open space nor outdoor living areas. As a result of contemporary building practices and space constraints, wholesale hardstanding of open space areas is common and does not facilitate tree planting nor retention. Increasing minimum rear setbacks in the R-Codes would also provide more opportunity to landowners to make choices to retain and plant trees.
- b) With reference to varied resourcing and capabilities of Local Governments, trees planted on verges are perhaps the most cost-effective for Local Governments to retain in perpetuity, and the planting and maintenance of street trees are a core function of Local Governments. In comparison to resource intensive activities such as enforcement of Tree Protection Orders, increasing canopy in road reserves can be a quick win for Local Governments and their communities. However, increasingly narrow road reserves and competition with services are a threat to increasing canopy at these locations. The imminent review of Liveable Neighbourhoods is an opportunity to explore wider road reserves for tree planting or dedicated planting areas within streetscapes for new subdivisions.



4 Next Steps

WALGA will work in collaboration with the Tree Retention Sub-Committee and wider Urban Forest Working Group, as well as others, including State Government agencies and research institutes, to address the gaps in knowledge and issues identified in this Issues Paper, and to advocate for stronger retention mechanisms.

This will include:

- Seeking advice from arborists, consultants, research institutes, legal experts, potentially under collaborative funding arrangements, to prepare guidance documents for Local Governments to guide tree retention under Local Planning Frameworks, and
- On the basis of the above advice, preparing advocacy strategies to enhance protection and value of trees in urban environments in Western Australia.

Expert advice (including legal advice) will be sought on behalf of the sector by engaging the relevant experts through a tender process. WALGA will be seeking expressions of interest from Local Governments who would be willing to participate in a collaborative funding arrangement to obtain the advice in sufficient detail and to a standard towards solutions for the identified issues.