

WALGA PLANNING SHOWCASE

22 September 2025

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Zorzi and Town of Cambridge



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- October 2024 - Development approval granted.
- December 2024 - Tree Retention Policy LPP3.25 adopted.
- March 2025 - Works began and direction issued.

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Preliminary issue: Did the DA issued in October 2024 authorise the removal of the tree?

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- Garden City principles relevant.
- Local Planning Strategy included objective to ‘maintain and expand upon the tree canopy ...’.
- Significant tree canopy as a key feature of attractive streetscapes.

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- No exemption for works involved in felling trees.
- Deemed provision 67(2)(p) – whether adequate provision has been made for landscaping, and whether any trees or vegetation should be preserved.

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- R-Codes Part C – The Garden.
- Design Principle – requires consideration is given to retaining existing trees.

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‘222 I am satisfied that, in the ordinary course, Parliament did not intend the PD Act, and the tentacles of planning law, to intrude too far into the activities and works undertaken in one's backyard. That is especially so when there are no tangible town planning impacts, such as adverse effects on neighbours or the amenity of the locality, arising from such works. Accordingly, the felling of a tree in a suburban backyard will not ordinarily raise any issues of town planning consequence, such that development approval is required.’

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- Size and presence in the streetscape.
- Location in an area in which trees are important.
- Ecological significance.

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‘237 The Town's adoption of LPP 3.25 did no more than belatedly recognise what really should have been acknowledged long ago. That is, significant trees are a community asset, the removal of which may have town planning consequences.’

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Lessons

- Retention of trees and other vegetation is a relevant planning consideration – with or without a tree policy.
- Removing a single tree may require approval. Questions of degree arise.
- The question arises whether or not the LG has a tree retention policy.

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The value of a policy:

- Tree removal can and should be regulated.
- The policy delineates when approval is needed.

Unlisted uses

George v Shire of Irwin [2024] WASC 418.

Unlisted uses

'If a person proposes to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type, class or genus of activity of any other use category the local government may –

- determine that the use is consistent with the objectives of the particular zone and is therefore permitted;
- determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of Clause 9.4 in considering an application for planning approval; or
- determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.'

Unlisted uses

‘That Council, by Simple Majority

- Determines that the use 'Brewery' may be consistent with the objectives of the Rural Smallholdings zone.
- Approves the application for development approval for a 'Brewery' and 'Restaurant' on Lot 201 (No. 30648) Brand Highway, Dongara subject to the following conditions...

Unlisted uses

Is the use not listed clause inconsistent with deemed provision clause 64?

Azar and City of Cockburn

- 'a) The use and development of land within the Resource Zone shall be in accordance with the provisions of:
 - (i) The relevant State Planning Policy for water.
 - (ii) The relevant State Planning Policy for basic raw materials.
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- d) Uses that are identified as 'incompatible' or which are not listed in [the Water Quality Policy] ... are 'X' uses in the Resource Zone.'

Azar and City of Cockburn

‘99 Nor can I discern any inconsistency with a deemed provision. While the deemed provisions make it plain that a structure plan and a local development plan cannot bind a decision-maker, there is no express, nor inferred, prohibition on other instruments having this effect.’