LOCAL GOVERNMENT ELECTED MEMBERS ASSOCIATION

LGEMA URBAN TREE CANOPY LAW AND POLICY REFORM[1]

(Currently being updated)

All WA local government Councils aspiring to preserve, enhance their urban tree canopy[2] as a climate change adaptation response; to protect our native fauna, human health and safety; and/or to increase property values[3] can use any of the following steps:

1. Require employee **reporting templates** to Council to include all the matters to which Council ***must*** have regard when making *any* decisions[4], which include the following headings under which to report:

   (a) What the *good government* of persons in its district requires

   (b) the need to promote the economic, social and environmental sustainability of the District

   (c) the need to plan for, and to plan for mitigating, risks associated with climate change

   (d) the need in making decisions, to consider potential long-term consequences and impacts on future generations

   (e) the need to recognise the particular interests of Aboriginal people

   (f) the need to involve Aboriginal people in decision-making processes

   (g) the need to consider collaboration with other local governments; because,

   Council will make more informed and better decisions, which are not put at risk in courts or tribunals by failing to have regard to a particular matter as required by the Local Government Act

2. Include urban tree protection and enhancement as an objective in Council's **Local Planning Strategy** because,

   *this will inform the objectives and specific content of the **Local Planning Scheme***.

3. Include urban tree protection and enhancement as an objective in Council's **Plan for the Future of the District**[5] because,

   *this will inform Council's **budget** allocations*.

4. Council adopts a Tree Protection **Local Planning Policy** because,

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[1] as at 22 October 2024

[2] urban trees are assets that mediate urban heat island effect, flash flooding, extreme temperature fluctuations, crime, social incohesion: *A Case Study Balancing Predetermined Targets and Real-World Constraints to Guide Optimum Urban Tree Canopy Cover for Perth, Western Australia* Parker and Simpson 23 October 2020

[3] leading to increased rates' income

[4] LG Act s.3.1(1A)

[5] LG Act s.5.56; formed by *Strategic Community Plan* and *Corporate Business Plan*: see *Local Government (Administration) Regulations 1996* Part 5 Reg.19BA & Reg.19C >

this will inform any discretionary development, subdivision and zoning decisions / recommendations

but noting that while a policy is not binding on decision makers, it will inform discretionary decision making, and sit behind proposals for local laws and scheme amendments to make tree protection binding on decision makers.

5. Limit all **delegated authority** from Council to employees with delegation conditions that their delegated authority can only be exercised in accordance with Council policy, including the Tree Protection Policy. This would meant that any decision (or recommendation to another authority) that local government employees believe warrants a departure from any Council policy must be brought to Council to decide (which condition must be recorded in the public delegation register) because,

   Only Council should decide and do so in public with notice on public agendas, which significant trees can be pruned or cut down and for what reasons,

   noting delegates can be lawfully bound by a Council policy[1] but the primary decision maker being Council in a local government cannot be lawfully bound by policy.

6. Make appropriate **budget allocations** for tree protection and preservation because,

   Municipal funds are needed to identify significant trees, establish a significant tree valuation model, value significant trees, and draft policies and scheme amendments; and to provide assistance where necessary to significant tree owners/managers.

7. Review the local government templates of standard building licence, development and subdivision **approval conditions** to ensure there are conditions to achieve best practice tree protection and tree planting; because,

   *Building and development and subdivision **approval conditions** are binding and enforceable,*

   noting Council can require particular conditions to be applied in particular circumstances through a Tree Protection Local Planning Policy.

8. Make a Local Law to protect ***local government property*** (including verges and trees) by requiring a development approval for private persons and government bodies (where lawful) to remove or prune significant trees[2] from or on local government property because,

   *Council will **set an example** in the way it manages its own assets by protecting these trees*;

   noting verges, including residential verges and trees on verges are local government property[3].

9. Ascertain the scope for making differential rates and giving rates incentives based on the canopy cover from trees in their own property or verge; because,

   *To **reward property owners** for their contribution to the tree canopy*,

[1] which can *only* be made by Council: LG Act s.2.7(2)(b) so Elected Members can bring community aspirations to such decision making

[2] such as in City of Melville, *Activities in Thoroughfares, Public Places and Trading Centres Local Law*: see *Adams v City of Melville* [2022] WASC 173 (*Adams*)

[3] see *Adams*

noting where such rates not possible under the current provisions, agitate[1] for law reform to make it lawful.

10. Remove from the *Local Planning Schemes*[2] to the extent possible *any* discretions and trade-offs adverse to environmental protection, local amenity and the local tree canopy,

    so decision makers cannot make trade-offs that reduce the urban tree cover through an exercise of statutory discretion embedded in the local planning scheme.

11. Propose and adopt an amendment to their **Local Planning Scheme** to require preservation and an increase in the urban tree canopy as a primary scheme objective and to require development approvals for pruning or removing significant trees on private property; because,

    To make protection and enhancement of the urban tree canopy an overriding scheme objective[3] *and to make pruning or removing significant tress on private property unlawful without* ***development approval***;

    noting Planning Minister may reject this amendment, as he has done in Nedlands and South Perth, but Council will send a strong message to state government by formally proposing this amendment, which may be effective if enough Councils propose such scheme amendments.

12. To propose and adopt an amendment to Local Planning Scheme to insert **third party merits review rights** against development approvals,

    to create a legal nexus between the Tree Protection Planning Policy and development decision making, and to ensure decision makers actually ***have regard*** *to the merits of the Tree Protection Planning Policy in a particular matter*;

    noting Planning Minister will reject such an amendment because it is inconsistent with the *Planning and Development Act*. However, Council will send a strong message to state government, which may be effective if enough Councils propose this scheme amendment. WA is the only state without **third party merits review rights** against development approvals. However, developers who are refused permission to prune or remove a tree have merits review rights against a meritorious application of Council's Tree Protection Policy.

13. Ensure Council's **Bushfire Management Committee** (BMC) is bound by the *Local Government Act* Committee rules and Council's Standing Orders Local Law,

    so that BMC decisions about fire breaks, bushfire management and land clearing, which might affect significant trees, are brought to the attention of Council and the community for their consideration,

[1] by Council resolution copied to media and MPs, and Council petition to each house of parliament
[2] *Game of Mates: How Favours Bleed a Nation*: Cameron Murray and Paul Frijters 2017, page 36; and see updated version *Rigged*
[3] which would be used for interpreting and applying any other material scheme provisions

noting BMCs are established under the Bush Fires Act. Councils need to ensure that they and the community have oversight of BMC decisions and proposals, given many in the bushfire industry have not caught up with current evidence about WA's bushfire mitigation practices[1].

14. To propose and adopt an amendment to the local government's Local Planning Scheme to insert **third party merits review rights** against development approvals,

    *to create a legal nexus between the Tree Protection Planning Policy and development decision making, and to ensure decision makers actually **have regard** to the merits of the Tree Protection Planning Policy in a particular matter*;

    noting Planning Minister will reject such an amendment because it is inconsistent with the *Planning and Development Act*. However, Council will send a strong message to the state government, which may be effective if enough Councils propose this scheme amendment. WA is the only state without **third party merits review rights** against development approvals. However, developers who are refused permission to prune or remove a tree have merits review rights against a meritorious application of Council's Tree Protection Policy.

Sandra Boulter

LGEMA Chair on behalf of the LGEMA Committee 22 October 2024

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LGEMA acknowledges the Whadjuk people who are the traditional custodians of the land we are working on
LGEMA acknowledges and respects the continuing culture of the Whadjuk people and the contribution they make to the life of Cottesloe and this region
Disclaimer: Any advice in this or any email from LGEMA is general only

[1] noting on 24 September 2024, DPLH released a new State Planning Policy SPP 3.7 Bushfire to be operational from 18 November 2024 to *provide the foundation for land use planning to address bushfire management in Western Australia. It is to be used to inform and guide decisionmakers, referral agencies and landowners/proponents to help achieve acceptable bushfire protection outcomes*