



CITY OF VINCENT

AGENDA
Late Report
Council Briefing
23 May 2017

Time: 6pm
Location: Administration and Civic Centre
244 Vincent Street, Leederville

Len Kosova
Chief Executive Officer

Order Of Business

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4.4	Response to Notice of Motion (Item 10.2 OMC 20 September 2016) – Request to investigate the requirements, conditions and associated compliance for development applications involving tree retention on private land	4

4 DEVELOPMENT SERVICES

4.4 RESPONSE TO NOTICE OF MOTION (ITEM 10.2 OMC 20 SEPTEMBER 2016) – REQUEST TO INVESTIGATE THE REQUIREMENTS, CONDITIONS AND ASSOCIATED COMPLIANCE FOR DEVELOPMENT APPLICATIONS INVOLVING TREE RETENTION ON PRIVATE LAND

TRIM Ref: D17/54052
Author: Ian MacRae, Planning Officer (Strategic)
Authoriser: Stephanie Smith, Acting Manager Policy and Place
Attachments: Nil

RECOMMENDATION:

That Council NOTES:

1. The changes made by Administration to the City's development assessment and enforcement procedures in relation to requirements, conditions and associated compliance for development applications involving tree retention on private land, as set out in this report; and
2. That local planning policy provisions relating to tree retention on privately owned land will be included as a future amendment to Local Planning Policy 7.1.1 – Built Form following the Western Australian Planning Commission's determination of the policy provision under Clause 7.3.2 of State Planning Policy 3.1: Residential Design Codes.

PURPOSE OF REPORT:

To consider Administration's response to the Notice of Motion presented at the Ordinary Council Meeting on 20 September 2016 (Item 10.2).

BACKGROUND:

The City has a focus on improving canopy coverage from trees and has already undertaken a number of actions in this regard including extensive tree planting in the public realm and introducing policy provisions that require landscaping and tree canopy to be provided in developments. However, there is limited policy guidance to encourage and facilitate the retention of existing trees on private properties through the development process and many existing trees on private property are still being removed to accommodate development. To address this concern Administration has been requested to investigate requirements, conditions and associated compliance for development applications involving tree retention on privately owned land (20 September 2016 Council Meeting, Item 10.2).

The Notice of Motion adopted is provided below:

"That Council requests the Chief Executive Officer to:

1. *Investigate and prepare Local Planning Policy provisions that will guide the application of conditions on development approvals where mature trees are required to be retained as part of a development through measures such as:*
 - 1.1 *Requiring an arboriculturist's report to be submitted to the City prior to commencement of development on the site;*
 - 1.2 *Ensuring that the recommendations of that report are required to be implemented by the developer/owner(s); and*
 - 1.3 *Including any other requirements the City believes will strengthen the planning and compliance framework to prevent wilful damage, neglect or removal of trees that are conditioned to be retained; and*

2. *Present a report to Council by May 2017 to examine the legal and operational mechanisms to require the City's approval for the removal of trees on private property and the introduction of subsequent penalties similar to those relating to the unauthorised removal of street trees."*

DETAILS:

Administration has conducted an investigation into the requirements, conditions and associated compliance for development applications involving tree retention on private land. This investigation has found that there are a number of ways that the City can influence the development and compliance processes to maximise tree retention on privately owned land.

1. Approval Requirements

Development Approval Requirements

The removal of a single tree on private land is not considered to constitute development under the Planning and Development Act 2005 so the City is not able to require a development application for the removal of a tree. Where a development application is required for another purpose and there is an existing tree on the site that is relevant to the development the City may apply conditions relating to the retention of the tree.

Local Law Approval Requirements

The City could introduce local law provisions to require a separate approval for tree removal and fines for unauthorised removals. However, this is not current practice in Western Australia and any local law changes would require the approval of the State Government. As the City's concerns are predominately associated with the compliance with development conditions, rather than the requirement for approval for tree removal, this approach is not considered suitable.

Local Planning Scheme Approval Requirements

Clause 21 of Town Planning Scheme No. 1 (TPS1) enables the City to list trees on the City's Trees of Significance Inventory and the Trees of Significance Policy provides guidance on the process for listing a tree. The removal of a tree from the Trees of Significance Inventory requires the approval of the City under TPS1.

This same provision was also included in the City's draft Town Planning Scheme No. 2 when it was adopted by Council on 18 November 2014. The draft Town Planning Scheme No. 2 is currently awaiting determination by the Minister for Planning.

2. Tree Retention Policy Provisions

The City has two policies that are relevant to tree retention. These include Local Planning Policy No. 7.1.1 – Built Form and Policy No. 7.6.3 – Trees of Significance.

The City's Trees of Significance Policy provides guidance on the process for listing a tree on the Trees of Significance Inventory. Where trees are included on the Trees of Significance Inventory the Policy provides guidance on how they should be maintained and protected. Trees on the Inventory must meet specific criteria which would mean that only trees of special importance can be registered.

The Trees of Significance Inventory is not intended to address general removal of existing trees on development sites. To protect trees on development sites under this Policy each tree would need to be identified, nominated and approved for listing prior to any development. This approach would be expensive, complex and possibly controversial. In addition, some trees may not be suitable for inclusion on the Trees of Significance Inventory despite their importance in relation to an individual development. For these reasons it is not considered necessary to amend this Policy.

The City's existing Built Form Policy encourages tree retention on privately owned land by providing that a proposal may be permitted to have a reduced deep soil planting zone where an existing tree is retained in the development. The City could introduce new local planning policy provisions into the Built Form Policy requiring that certain existing trees are retained. This approach, combined with the use of a condition on a development approval, would further strengthen the statutory weighting of the requirement to retain existing trees than a condition imposed in isolation.

3. Development Assessment Review

As a result of the Notice of Motion, the City undertook a review of its development assessment procedures applicable to existing tree retention on development sites. As a result, the City's Administrative procedures have been updated to ensure that an arboriculture report is provided when a development application is lodged and there are existing trees potentially impacted by the development. This ensures that any existing trees worthy of retention are identified and their retention can be fully considered as part of the development assessment process.

The current *Planning and Development (Local Planning Schemes) Regulations 2015* allow the City to impose conditions on development approvals requiring that existing trees are to be retained. A set of standard conditions has now been developed that can be adjusted and applied as needed to suit the individual circumstances of each approval.

4. Enforcement Procedure Review

The City ensures compliance with all conditions that are applied to development approvals, including those relating to existing tree retention. Where a breach of a condition can be established the City can take enforcement action under the *Planning and Development Act 2005*. The City's Prosecution and Enforcement Policy provides the below enforcement options:

- Verbal direction;
- Warning letter;
- Issue of Infringement Notice/s;
- Issue of Notices/Orders/Directives;
- Prosecution action; and
- Any combination thereof.

Prosecution of a breach can result in a penalty for each breach of up to \$200,000 for an individual and \$1,000,000 for a corporation. There is already sufficient ability for the City to undertake necessary compliance action where developers do not comply with development conditions so it is not considered necessary to make changes to the City's Prosecution and Enforcement Policy to enable this.

Following the Notice of Motion the City has reviewed the enforcement procedure followed for breaches involving the removal of a tree. The City's previous approach was to provide alleged offenders with the option of lodging an application for retrospective development approval for all breaches. If retrospective approval was then lodged and obtained, the City would not pursue prosecution. As a result of this review the City's enforcement procedure has been modified to ensure that where a tree is removed in contravention of a condition of development approval, the decision to prosecute is still assessed and considered against the public interest test and other criteria set out in the Prosecution and Enforcement Policy, even if the offender has sought retrospective approval for the removal of that tree.

CONSULTATION/ADVERTISING:

Nil.

LEGAL/POLICY:

- *Planning and Development Act 2005*;
- *Planning and Development (Town Planning Schemes) Regulations 2015*;
- Policy No. 2.1.1 - Street Trees;
- Policy No. 4.1.5 – Community Consultation;
- Policy No. 7.1.1 – Built Form; and
- Policy No. 7.6.3 – Trees of Significance.

RISK MANAGEMENT IMPLICATIONS:

Nil.

STRATEGIC IMPLICATIONS:

The City's Strategic Plan 2013 – 2023 states:

"1.1.1 Develop and implement a Town Planning Scheme and associated policies, guidelines and initiatives that deliver the community vision."

SUSTAINABILITY IMPLICATIONS:

The City's Sustainable Environment Strategy 2011 – 2016 states:

"Objective 6: Re-establish, conserve and enhance floral and faunal biodiversity, native vegetation, green spaces and green linkages within the City."

Action 3.11: Require the retention of existing trees on street verges, and encourage the retention of vegetation and trees on private lots."

City of Vincent Greening Plan 2014 states:

"Objective 5: Greening New Development"

*Actions: Amend planning policies to increase and tighten requirements for the provision of green space in new developments.
Use available planning instruments to mandate the retention or reinstatement of existing vegetation.
Use available planning instruments to incentivise the retention or reinstatement of existing vegetation."*

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

As a result of this review the City has made several improvements to its development assessment and enforcement procedures to ensure that existing trees are retained in the development process. It is not considered necessary for the City to draft legislation that would require all tree removal to be approved by the City. The most appropriate response for the City to strengthen its current position on existing tree retention would be to introduce additional local planning policy provisions, in the Built Form Policy, to set out the circumstances when relevant development conditions shall apply. Local planning policy provisions of this nature have been drafted and including these provisions in the Built Form Policy would need to be undertaken through a policy amendment process.

Several provisions of the Built Form Policy are currently with the Western Australian Planning Commission for consideration and determination under Clause 7.3.2 of the R-Codes. As these provisions are still under consideration it is recommended to undertake a further amendment to the Built Form Policy once a determination has been made to address existing tree retention on private land.