



CITY OF STIRLING

LOCAL PLANNING SCHEME NO 3 - AMENDMENT NO. 113

Resolution to prepare Amendment to Local Planning Scheme No.3

Resolved that the local government pursuant to section 75 of the *Planning and Development Act 2005*, amend the above Local Planning Scheme by amending the Scheme Text by:

1. Amending the following clauses as follows:

- 1.1 In Clause 5.5.5 replacing the term 'significant tree' with '**registered tree or established tree**';
- 1.2 In Clause 5.13.1 replacing the term 'significant' with '**established**';
- 1.3 In Clause 5.13.2.a replacing the term 'significant' with '**established**';
- 1.4 In Clause 5.13.2.b replacing the term 'significant' with '**established**';
- 1.5 In Clause 5.13.2.c replacing the term 'significant' with '**established**';
- 1.6 In Clause 5.13.3.a replacing the term 'significant' with '**established**';
- 1.7 In Clause 5.13.3.b twice replacing the term 'significant' with '**established**';
- 1.8 In Clause 5.13.3.c replacing the term 'significant' with '**established**';
- 1.9 In Clause 10.3.2.h replacing the term 'significant' with '**established**'; and
- 1.10 In 'Schedule 1: Dictionary of Defined Words and Expressions – General Definitions' inserting the new defined term of '**Established Tree**' with the following definition:

“means a woody plant at a height of at least four (4) metres above ground level and meets one of the following criteria:

 - a) for a single trunk species, a trunk circumference of at least 500mm at a height of one (1.0) metre above ground level; or**
 - b) for a multi trunk species, a trunk circumference of at least 250mm at a height of one (1.0) metre above ground level.”**
- 1.11 In 'Schedule 1: Dictionary of Defined Words and Expressions – General Definitions' inserting the new defined term of '**Registered Tree**' with the following definition:

“means vegetation that is identified in the local governments Protected Tree Register.”

- 1.12 In 'Schedule 1: Dictionary of Defined Words and Expressions – General Definitions' deleting the defined term of '**Significant Tree**'.

2. Inserting Schedule A before Schedule 1 as follows:

“Schedule A - Supplemental provisions to the deemed provisions

These provisions are to be read in conjunction with the Deemed Provisions (Schedule 2) contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Part 3A – Protected Tree Register

Cl. 13B. Terms used

In this Part –

arborist report means a report produced by a person who has obtained a minimum of Australian Qualification Framework Level 5 Certification in Arboriculture (AQF5 Arborist) or equivalent qualification. The arborist report has information that concerns the health, value and general state of the tree, the structural root zone and tree protection zone, and a Tree Management Plan that outlines the methodology to preserve the tree;

protected tree means a tree that is included in the Protected Tree Register;

protected tree register means a Protected Tree Register established under clause 13C;

structural root zone means an area specified in Australian Standard 4970-2009 Protection of Trees on Development Sites, around the base of a tree required for the tree's stability in the ground;

tree means an individual perennial tree;

tree protection zone means an area specified in Australian Standard 4970-2009 Protection of Trees on Development Sites. This is the area above and below ground for the protection of a tree's roots and crown from development, to provide for the viability of a tree that is to be retained.

Cl. 13C. Establishing a Protected Tree Register

- (1) The local government may establish and maintain a Protected Tree Register to identify trees within the scheme area that are worthy of protection.
- (2) The Protected Tree Register –
 - (a) must set out
 - (i) a description of each tree;
 - (ii) the tree protection zone of each tree;
 - (iii) the structural root zone of each tree;
 - (iv) the location of each tree;
 - (v) the address of all properties that contain the structural root zone of the tree;
 - (vi) special conditions that apply (such as where pruning is expected from Western Power lines etc);
 - (b) must be available with the scheme documents where they are available for public inspection during business hours at the offices of the local government; and
 - (c) must be published on the website of the local government.

Cl. 13D. Adding and removing trees to the Protected Tree Register

- (1) The local government must not enter a tree in or remove a tree from the Protected Tree Register, or modify the entry of a tree in the Protected Tree Register unless the local government –
 - (a) notifies in writing each owner and occupier of any land which contains the tree, any branches of the tree and the tree protection zone;
 - (b) provides each notified owner and occupier with a description of the tree and the reason for its proposed entry, removal or modification;
 - (c) invites each owner and occupier to make submissions on the proposal within 21 days of the day on which the notice is served or within a longer period specified in the notice;
 - (d) carries out any other consultation the local government considers appropriate; and
 - (e) following any consultation and consideration of the submissions made on the proposal, resolves that the tree be entered onto or modified in the Protected Tree Register with or without modifications, or that the tree be removed from the Protected Tree Register.
- (2) If the local government enters a tree onto the Protected Tree Register or modifies an entry of a tree in the Protected Tree Register, the local government must give notice of the entry or modification to each owner and occupier of any land which contains the tree and tree protection zone.

Cl. 13E. Works to, or near, a Protected Tree

A Protected Tree, its branches and any roots within the tree protection zone are prohibited to have works undertaken, except in the following circumstances –

- (a) works on a neighbouring property, which contains branches and roots of the Protected Tree, but does not contain the structure root zone; or
- (b) pruning to the Protected Tree that involves –
 - (i) removal of dead wood; or
 - (ii) treatment of disease; or
- (c) works to the Protected Tree identified in a City issued arborist report; or
- (d) works to the Protected Tree approved by the City's Tree Assessment Panel; or
- (e) works to the Protected Tree that are urgently necessary for public safety; or
- (f) development approval for building works has been granted, which identifies works (but does not require removal of) the Protected Tree; or
- (g) subdivision approval has been granted by the Western Australian Planning Commission which identifies works (including removal of) the Protected Tree; or
- (h) approval has been granted for works to the tree following a Commonwealth or State environmental assessment.

Cl. 13F. Accompanying material where development relates to a Protected Tree

Prior to the determination of an application for development approval or subdivision, for land which contains a Protected Tree, the decision maker may require the applicant to submit an arborist report. The arborist report is to specify –

- (a) the condition of the tree;
- (b) the proposed work;
- (c) matters that minimise the impact to the tree to ensure its viability; and
- (d) the methodology to preserve the tree (Tree Management Plan).

Cl. 13G. Variation to site and development requirements

- (1) Where development is proposed on land and the preservation of a Protected Tree would otherwise unduly restrict the reasonable development of the land the local government may grant by way of development approval, a variation to any development provision (except related to site area) of the Scheme, Local Planning Policy, State Planning Policy 7.3 – Residential Design Codes, Local Development Plan or Structure Plan where desirable to facilitate the preservation of the Protected Tree.
- (2) The local government is not to grant development approval that requires a variation under subclause (1) which might, in the local government's opinion, significantly affect an adjoining property or a property in the locality unless –
 - (a) the application seeking the variation is advertised in accordance with clause 64 of the Deemed Provisions; and
 - (b) any submissions received in response to that advertising, are duly considered by the local government.

Cl. 13H. Duty of care

- (1) The owner, occupier or other person in control of land affected by a tree or the tree protection zone listed or nominated for listing on the Protected Tree Register shall preserve the tree from injury or death through neglect or malicious intent.

Cl. 61. Development for which development approval not required

- (6A) Despite subclause (1) and (2), an exemption under those subclauses does not apply to development if there is an impact to a Protected Tree as per Part 3A, its branches or its roots in the tree protection zone. Development approval is not required in the instances outlined in Clause 13E.”