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City of Boroondara Tree Protection Local Law Review

Introduction

Lighter Footprints appreciates the opportunity to contribute to the 12-month review of the Tree Protection Local Law which has been in place since 26 November 2016, replacing an earlier Local Law that commenced in 2006. This review derives from a resolution taken by the Council when the local law was approved in 2016.

Lighter Footprints is a local environmental group that has around 2000 members and supporters in the municipalities of Boroondara and Whitehorse. We strongly support the purpose of the local law to maintain the established treed character of Boroondara and to prohibit, regulate and control activities which put this canopy tree cover at risk.

The benefits of trees in the urban environment are well established and far reaching. (We note some of these further in our submission.) Of particular importance to us is the fact that trees play an exceptional role in helping people and their communities cope with the adverse impacts of climate change. The negative impacts of rising temperatures in the absence of effective canopy tree cover is significantly more pronounced in the urban environment, an effect commonly characterised as the 'urban heat island effect.' In addition, they act as carbon sinks at a time when we must reduce the levels of carbon dioxide that continue to fuel global warming.

The Purpose of the Review

It is our understanding that this review will provide information and insights that the council administration will use in preparing a report for a Council meeting to determine whether further changes to the Local Law may be warranted.

Lighter Footprints welcomes the review but is not convinced that reliance on the local law will be sufficient to achieve the objective of protecting trees on private land. Anecdotal evidence indicates that canopy tree cover has fallen since the law was first introduced in 2006 and that this decline appears to have continued since the current local law was introduced in 2016.

We note the existence of an accessible record of trees saved under the local law. At the same time, there does not appear to be any accurate way of measuring the number of trees lost on private land in Boroondara over this time. Observations would suggest that this number is much greater than those that have been saved.

We suggest that the Council should look at a broader approach to protect canopy trees. This could include other regulatory approaches that municipalities in a similar position to Boroondara have introduced.

Why we want a stronger approach to protecting Boroondara's tree cover including that on private land

Trees are an essential element of this municipality not only because they retain the traditional nature of the area but also because they contribute to the health and wellbeing of our community and play a significant role in combatting climate change.

Mature trees provide many benefits to the immediate and wider environment; while the lack of or loss of trees entails a loss to the environment. These benefits include:

- The economic and physical contribution that trees make to the quality of the environment in which we live and the comfort and productivity of our communities.

Trees contribute to the reduction in energy requirements for heating and cooling purposes, the diminution of hazards such as local flooding, strong winds and storms; interception of rainfall, reduced water runoff and cleaning of runoff; production of oxygen; the absorption of pollutants (see below as well); reduced soil erosion; noise reduction; and the wide range of bird life, including as corridors for the passage of birds, small animals, and insects and other small forms of life that trees sustain many of which are only understood when they are gone.

- The social and health amenity that trees create

Trees contribute much to social and mental wellbeing as well to the physical health of our communities. These benefits include the provision of shade and shelter and moderation of temperature; removal of air pollutants including CO², dust, pollen, carbon and other particulates, reduced risks of cataracts, skin cancer and rates of asthma, respiratory disease and cancer from air pollution, and decreased deaths from cardiac and lung diseases.

- The capacity of trees to make a substantial contribution to mitigating the impact or adapting to the consequences of climate change.

As already mentioned, trees contribute to the mitigation of climate change through processes such as absorption of CO² from the atmosphere and its long term storage, the reduction of the urban heat island effect by reducing ambient air temperatures and the moderation of energy demand for heating and cooling.

Efficacy of a local law

The efficacy of a piece of legislation will be judged on its ability to prevent a certain kind of behaviour. Designed as a disincentive to punish a wrong-doer, the law will only stop the perpetrator from undertaking this behaviour if there is a strong likelihood he or she

will be caught and the penalties are sufficiently large to lead to a severe disadvantage financially, or through loss of liberty or reputation.

In the case of the Tree Protection Local Law, the likelihood of an offender being prosecuted for removing or irretrievably damaging a tree is very low. We note there has been some recent increase in staffing. It would seem, however, that there are still not sufficient resources to adequately attend to all events where the local law applies. This includes removal assessments, events where offences may have occurred, including those where enforcement of the law is required or where illegal removal needs subsequent action.

Penalties

The present maximum penalties available under the Local Law (20 penalty units, or \$2,000 as provided for in the Local Government Act) are far too low and do not provide a material disincentive against the illegal damaging or removal of canopy trees.

Lighter Footprints notes the recent submission by the Boroondara Council in response to the Exposure Draft Local Government Bill. In our view, the Council should have recommended a substantial increase in the maximum fine that may be levied under the Tree Protection Local Law. It is the level of fine in so many other areas of law enforcement that has proved key to changing behaviours.

Definition of a canopy tree

At present, developers are required to submit applications for the removal of trees with a trunk circumference greater than 110 cm measured 1.5 metres from ground level. Typically, such a tree has taken quite a number of years to reach this size. To continually replenish the stock of mature canopy trees, it will also be essential to protect trees that are much smaller than this. Lighter Footprints therefore proposes that the Local Law be amended to provide for the protection of trees with a trunk circumference of 50 centimetres or greater.

Data and monitoring

Anecdotally it appears that canopy tree cover in Boroondara has continued to decline since November 2016. It is hard to find data that could indicate how many trees have been approved for removal since November 2016, or the level of illegal activity during this period. And, of course there is significant removal of trees not covered by this law which goes unrecorded as well.

We recommend the Council establish and maintain a comprehensive database on the existing tree cover in Boroondara and how it is changing. This would provide a baseline from which to measure change as well as a means to judge the efficacy of the law. As part of this information gathering, we suggest that the Council also establish processes to collect information to demonstrate whether the law and other related processes are having the desired effect.

Further questions that could be covered as part of this information gathering exercise would include:

- What change has happened to the tree cover on private land in Boroondara in the last 12 months.
- The proportion of trees removed which were reported to the Council for assessment
- The success rate of re-plantings required as part of a successful application.

Other questions include the number of permit applications that were made, how many were approved and why, how many were not approved and on what grounds.

Once established, a database should not be too onerous for existing resources within council administration to maintain.

Monitoring will always be an important part of the implementation of this local law. It is unclear how successful re-plantings directed under the Local Law have been.

Accordingly, we suggest that, more attention be paid to following up the requirement to plant a new tree to ensure this has been fulfilled and the tree is being properly nurtured to ensure its longevity. Re-plantings should also be monitored at least annually over the subsequent decade.

What further changes or other approaches should be considered?

We note that one significant gap in identifying trees that should fall within the province of the Local Law is the lack of a link between the submission of planning and building permits and the notification of a liability to submit an application to remove a tree under the Tree Protection Local Law. We recommend that this gap be addressed.

In its announcement of the review, the Council noted that *'We are one of a handful of councils to have a Local Law requiring permits to remove trees on privately owned land'*.

As it is removals of trees from private land that has been by far the greatest source of the city's canopy loss, an obvious question is why only a few have adopted this approach. Do other Councils consider it inappropriate to make such regulations? Have other Councils dismissed this approach because they have found it to be ineffective in protecting trees on private land? Is it because they have identified superior approaches to achieving this objective? Are the handful of other Councils supplementing their local law with other mechanisms which they have found to strengthen the operation of the local law?

We suggest that Council should assess other approaches **to be used in conjunction with the Local Law**. These, non-exhaustively, should include:

- The potential use of a security bond payable before planning or building permits are issued that is refundable subject to the satisfactory protection of existing tree cover. Security bonds may be payable under Clause 13 of the local law but it is

unclear whether the measure has been deployed and, if so, whether it has been effective in preserving existing canopy trees; and

- The institution of a Significant Vegetation Overlay within the Planning Scheme to apply to the whole municipality as recently introduced by the City of Whitehorse.

Cultural and behavioural change is needed to reinforce community awareness of the true value of trees on private land

A high proportion of community members value canopy trees for the many benefits they bring. However, too many of those engaged in the redevelopment of residential properties in Boroondara in recent years have been indifferent towards the value of canopy tree cover on their own properties, whilst valuing living in this leafy suburb.

The Council is in a good position to provide active leadership and education to promote these values by encouraging the growing and protection of trees on private land and helping residents understand the important contribution each tree makes.

We acknowledge the work that Council has done in growing and protecting trees on streets and parks throughout our community. We also note that many of the older European trees are suffering from the increasing heat and drought as climate change progresses. Other species that are more heat and drought resistant should be being promoted (as in many cases they are but not insisted upon where residents have other less informed views) The very useful information on the Council website about canopy trees¹ is a start.

Lighter Footprints recommends that the Council actively promote the value of trees on private land with a range of measures intended to ensure residents and property developers give priority in their decision making to protecting, nurturing and increasing the tree cover on their land.

Such programs and measures would include:

- cultural and educational programs aimed at making all stakeholders and especially those involved in property redevelopment aware of the wide range of benefits associated with the protection of trees on private land:
- encouragement of better building design that sees trees as an asset that can create value for a property and enhance its liveability

Conclusions

Lighter Footprints supports the objective behind the Tree Protection Local Law which is to protect trees on private land. We believe, however, that legislation can only address part of that objective and should be supported by a suite of measures both regulatory and non-regulatory. We also consider there are weaknesses in the law as it is currently formulated and administered which should be addressed.

¹ <https://www.boroondara.vic.gov.au/waste-environment/trees-and-naturestrips>

We recommend that:

- The Council give wider consideration of the range of regulation available to protect canopy trees on private properties. This would include:
 - use of a security bond payable before planning or building permits are issued that is refundable subject to the satisfactory protection of existing tree cover
 - the institution of a Significant Vegetation Overlay within the Planning Scheme to apply to the whole municipality.
- The Council undertake a baseline study of the current tree cover in the City of Boroondara to provide a meaningful measure over time of how vegetation cover in the municipality is changing.
- The Council collect information on a range of measures to demonstrate the efficacy of the Local Law in protecting trees on private land.
- A link be established between the assessing of planning and building permits and requirement to make applications under the Tree Protection Local Law
- In light of the inadequacy of the current levels of penalties, Council advocate State Government to substantially increase the maximum fine that may be levied under the Tree Protection Local Law.
- The Local Law be amended to provide for the protection of trees with a trunk circumference of 50 centimetres or greater at 1.5 metres above the ground to protect trees with the potential of becoming canopy trees.
- The Council actively promote the value of trees on private land with measures to encourage cultural and behavioural change amongst residents and property developers.

As convenor for Lighter Footprints, and as part of a group of members particularly interested in this issue, we would welcome the opportunity to further discuss these issues with Councillors and Council officers. I can be contacted by email on admin@lighterfootprints.org or by mobile on 0411 115 186.

Yours sincerely

Carolyn Ingvarson
Convenor Lighter Footprints

27 March 2018