Case Note: Kemstone Investments Pty Ltd and City of Joondalup

Site planning for trees and deep soil areas

In **Kemstone Investments PTY LTD and City of Joondalup [2020]** WASAT 115 the SAT considered a decision of the City to refuse a development application for six multiple dwellings on a single lot. Key considerations in the decision were if the proposed development satisfied Element Objectives O 3.3.1 (site planning for trees) and O 3.3.3 (deep soil areas) of the R-Codes, as well traffic impacts, compatibility and amenity under cl 67 of the deemed provisions. This case note focuses on the considerations related to trees and deep soil areas.

The Tribunal ultimately determined to refuse the proposal, citing 2 reasons. The first being that the proposed deep soil areas for the two medium trees were inadequate as they were 'squeezed', and that while the deep soil areas technically 'met' the recommended (or 'acceptable') requirements for medium trees under the R-Codes, the proposed arrangements were far from ideal, and compromised [56]. In this instance the Tribunal was not satisfied that the deep soil areas were sufficient to meet O 3.3.3, specifically *'not satisfied that they will serve the intended purpose of supporting and thereafter sustaining health trees in the longer term' [123]*.

Senior Member Willey in his disposition provided the following critique*: 'In short, planning and design experts need to do better. The day has long passed where landscaping concepts, in the context of the medium and high-density proposals under the R Codes, can be dealt with as a design afterthought.'* [125]

The Tribunal also commented on the way the development considered Element O 3.3.1 of the R Codes; the requirement that site planning 'maximises retention of existing healthy and appropriate trees'. Noting that the *'retention of the Cypress tree was never seriously contemplated by the applicant.'* [40].

Peter Wittkuhn, Partner, Mcleods and Associates, presented on this decision at WALGA's Trees in a Liveable City Conference. A copy of his presentation can be found **here**. A recording of this presentation will be made available shortly.