

AMENDED ITEM



Item No: 6.3
Title: Notice of Motion - Significant Tree Register
Department: Councillor

13 July 2020 Ordinary Council Meeting

Reference: F2020/00037 - D14059129
Author: Louise Greenaway, Councillor
Jillian Hogan, Councillor

Councillors Greenaway and Hogan have given notice that at the Ordinary Council Meeting to be held on 13 July 2020 they will move the following motion:

- 1 That Council acknowledges the valuable contribution of community members who nominate trees for the Significant Tree Register.**
- 2 That Council notes that the Significant Tree Register lists a range of trees; some are natives, but others are of historical or heritage value.**
- 3 That Council reinstates the position of not charging a fee for nominating trees to the Significant Tree Register, and in the interim requests the CEO to waive any fees associated with that Register should any nominations be received.**
- 4 That Council request the Chief Executive Officer to investigate the opportunities for incorporating the Significant Tree Register in Council's Local Planning Instruments with the specific intention of providing long term protection to the Trees listed on the register.**

Chief Executive Officer Response

The Chief Executive Officer considers that this Notice of Motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting. As a result, the Chief Executive Officer will provide a report in relation to the Notice of Motion. This report will be provided as a Late Item and will be made available by close of business on the Friday prior to the Council Meeting.

Attachments

- 1 CEO Response - Notice of Motion - Significant Tree Register D14060579

Title: CEO Response - Notice of Motion - Significant Tree Register

Department: Environment and Planning



13 July 2020 Ordinary Council Meeting

Reference: F2020/00037 - D14060579

Author: Scott Irwin, Section Manager, Sustainable Environments

Manager: Luke Sulkowski, Unit Manager, Environmental Management

Executive: Scott Cox, Director Environment and Planning

Summary

This report provides a response to Item 6.3 - Notice of Motion – CEO Response - Notice of Motion - Significant Tree Register.

Motion:

- 1 That Council acknowledges the valuable contribution of community members who nominate trees for the Significant Tree Register.**
- 2 That Council notes that the Significant Tree Register lists a range of trees; some are natives, but others are of historical or heritage value.**
- 3 That Council reinstates the position of not charging a fee for nominating trees to the Significant Tree Register, and in the interim requests the CEO to waive any fees associated with that Register should any nominations be received.**
- 4 That Council request the CEO to investigate the opportunities for incorporating the Significant Tree Register in Council's Local Planning Instruments with the specific intention of providing long term protection to the Trees listed on it.**

Staff Comments:

At its Ordinary meeting held 12 August 2019, Council resolved as follows:

- 712/19 That Council receive and note the outcomes of the public exhibition of draft Development Control Plan Chapter "XX"- Tree and Vegetation Management.
- 713/19 That Council adopt draft Development Control Plan Chapter "XX"- Tree and Vegetation Management, to be inserted as Chapter 3.6 within the Wyong Development Control Plan 2013 and Chapter 6.6 within the Gosford Development Control Plan 2013 with the following amendments:
- a) Insert the following paragraph in "1.0 Introduction":
 - i. "Trees which are identified as having local significance on the Central Coast are listed on Council's Significant Tree - 8 -

Minutes of the Ordinary Council Meeting of Council 12 August 2019 contd Register. Council or the community have identified these trees as they have significant amenity values or are functionally important links in the wildlife food chain Council encourages pruning and retention of these trees rather than removal. Except as provided by Section 3 Exemptions, a permit is required for removal of listed trees. Council's Significant Tree Register can be accessed on Council's website at <https://www.centralcoast.nsw.gov.au/residents/property/trees-and-gardens>"

- b) Replace all references to AQF3 Trade Arborists with AQF5 Consulting Arborists.*
- c) Replace all references to "encouraging" replacement plantings to "requiring" replacement plantings, with replacement trees to be planted by Council and equivalent to those removed under the permit scheme and in addition to planned planting.*

714/19 That provision be made to expand the Significant Tree Register to include trees located in the former Wyong Shire and to allow for Council staff or members of the community to nominate trees for inclusion on the register including trees of cultural significance and heritage (i.e. trees of cultural significance at Budgewoi).

715/19 That Council request the Chief Executive Officer provide a report to Council in 6 months' time providing a review of the workload of the tree compliance officer.

716/19 That permit processes be streamlined to minimise any potential cost to ratepayers in the reporting and application process.

717/19 That Council publish a public notice of its decision within 28 days.

718/19 That Council provide the Planning Secretary with a copy of the Plan within 28 days of it coming into effect.

719/19 That Council advise all those who made a submission of the decision.

In regard to the motion proposed by Council for 13 July 2020, staff provide the following information:

- 1 That Council acknowledges the valuable contribution of community members who nominate trees for the Significant Tree Register.**

Noted.

- 2 That Council notes that the Significant Tree Register lists a range of trees; some are natives, but others are of historical or heritage value.**

Noted.

3 That Council reinstates the position of not charging a fee for nominating trees to the Significant Tree Register, and in the interim requests the CEO to waive any fees associated with that Register should any nominations be received.

The fee adopted by Council is not a fee to nominate a tree for listing on the Significant Tree Register, it is for a Review of Significant Tree applications. Not all nominations will require review, and will therefore not require application of the Council adopted fee.

Staff are not proposing to review trees nominated for inclusion on the register by the property owner. If a landowner considers a tree on their property to be significant and they would like inclusion on the register, staff intend to facilitate this and include the tree on the register without review at no cost provided the relevant information for inclusion on the register accompanies the nomination.

The draft process that staff have developed does not allow for nomination of trees by third parties on land which they do not own without owner's consent. The property owner (including Council owned and managed land, or land owned by state government authorities) must endorse the nomination of a tree on their land.

The fee will be applied where there is a request to nominate a tree for inclusion on the register when the tree is on Council land. Trees that are growing on Council land, will require physical assessment against a set of pre-determined criteria by Council's Tree Risk Management Officers (AQF5 and higher qualification level). In some instances, the review may also require assessment by Council's Heritage Officer. The intent of the fee is therefore to help recoup costs associated with the assessment as well as deter nominations for trees that are unlikely to be considered significant noting that these trees will still require significant investment of staff time to undertake physical inspection and assessment.

Advice from staff involved with the application of the former Gosford City Council significant tree register suggests that community nominations for trees onto the Significant Tree Register required considerable time for physical assessment and evaluation of nominated trees. This had some impact on service levels of other functions provided for by the team including management of public safety issues presented by Council trees, and investigation of regulatory and compliance matters associated with potential illegal tree activities. Given that trees on the significant tree register are already afforded equivalent protection (see response provided under Item 4 below), prioritisation of effort and resources is better targeted toward these other functions as opposed to reviewing significant tree nominations as they will yield a greater net outcome for the community and the environment.

Having said this, given their general exposure to trees on Council land, staff will have the capacity to identify trees for potential inclusion on the register as part of their normal duties. This is expected to include a number of trees to be included on the significant tree register at establishment. This is likely to include trees such as the Broad Leafed Paperbark (*Melaleuca*

quinguinervia) grove at Mackenzie Reserve, Budgewoi which have significance in an urban setting.

Staff have already undertaken a review of every tree that was listed on the previous Gosford Significant Tree register. The audit took two officers (AQF5 qualified arborists) over 10 days to complete, and found that of the 116 entries, 25% of the entries on this register were found to include trees that could not be located or were assumed to be removed. Due to tree health and other factors, other trees that were audited may not be considered appropriate for inclusion on the register.

4 That Council request the CEO to investigate the opportunities for incorporating the Significant Tree Register in Council's Local Planning Instruments with the specific intention of providing long term protection to the Trees listed on it.

The planning framework is set by the State Government with model provisions provided to all councils relating to the LEP. The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 is the statutory instrument for tree management for Councils across NSW including Central Coast.

The Gosford/Wyong LEP, as the lowest level of statutory planning hierarchy, makes no reference to a significant tree register in the body of the document or in the definitions, and has the two clauses 5.9 and 5.9AA relating to tree management that were repealed in 2017 when the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP Vegetation) came into force.

There is no reference to, or definition for, a significant tree register in the EP&A Act 1979. The mechanism that allows for environmental planning instruments to consider trees is Division 3.2, 3.14 Contents of environmental planning instrument (e) *protecting or preserving of trees or vegetation*. Noting that this is no longer relevant as the clauses 5.9 and 5.9AA of the Gosford/Wyong LEPs and was repealed in 2017 when the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP Vegetation) came into force.

The SEPP Vegetation makes no reference or mention of significant tree register and provides the following at clause 10 (3) as the only limitations to issuing a permit, where significance is referred to as heritage significance.

- (3) A permit under this Part cannot allow the clearing of vegetation—
- (a) that is or forms part of a heritage item or that is within a heritage conservation area, or
 - (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,

unless the council is satisfied that the proposed activity—

- (c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and
- (d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

There is no statutory standing for Significant Tree Registers as it is not supported within any of the legislation or planning instruments.

There is however a clear section in the LEP on Heritage at 5.10 Heritage Conservation where reference is made to *heritage significance*, rather than significant trees, which provides a context and framework against which to measure the heritage significance.

The Gosford LEP Part 5 (3) (c) states regarding when consent is not required*the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property*. This applies to trees listed in Schedule 5 Environmental Heritage and is an acknowledgment that trees within urbanised areas have a *finite safe useful life span*.

The relevant wording included in the DCP following Council's resolution 713/19 of 12 August 2019 ensures that any tree listed on the Significant Tree Register must be accompanied by a permit for removal unless covered by one of the exemptions identified in the DCP. Staff note however that all trees are protected by the same provisions of the DCP regardless of their listing on the Significant Tree Register.

The Central Coast Council DCP Chapter 3.6 (Wyang DCP 2013) and Chapter 6.6 (Gosford DCP 2013) Tree and Vegetation Management already provides strong long-term protection mechanisms for trees, with further modification not considered necessary to achieve greater long-term protection for trees listed on the Significant Tree Register.

Given the above information, it is the recommendation of staff that Council, as moved by the Councillor, acknowledges the valuable contribution of community members who nominate trees for the Significant Tree Register.

Link to Community Strategic Plan

Theme 3: Green

Goal F: Cherished and protected natural beauty

F1: Protect our rich environmental heritage by conserving beaches, waterways, bushland, wildlife corridors and inland areas, and the diversity of local native species.