

13.1 PSA-2021-2 AMENDMENT TO THE KINGBOROUGH INTERIM PLANNING SCHEME 2015 TO UPDATE THE SIGNIFICANT TREE LIST

File Number: PSA-2021-2
Author: Adriaan Stander, Strategic Planner
Authoriser: Tasha Tyler-Moore, Manager Development Services

Application Number: PSA-2021-2

The purpose: The purpose of this report is:

1. To inform Council of the nominations received for significant tree listing / delisting.
2. To provide Council with an overview of the Council officer's assessment of the nominations against the Significant Tree Policy.
3. To seek initiation of a planning scheme amendment as the Planning Authority to update the significant tree list in Table E24.1 of the Significant Trees Code of the *Kingborough Interim Planning Scheme 2015* (KIPS2015).

Representations: This report is pre-public exhibition, and therefore the proposed amendment to the planning scheme has not been advertised yet. Draft amendments are advertised for a minimum period of 28 days for public comment following initiation by the Planning Authority.

Recommendation: That Council resolves to initiate Amendment PSA-2021-2 to the *Kingborough Interim Planning Scheme 2015*.

1. INTRODUCTION

- 1.1 Many of the trees in Kingborough have significant aesthetic, cultural and/or historical importance. In acknowledging these important values Kingborough Council decided to establish a [Significant Tree Policy](#).
- 1.2 The policy outlines the process and the criteria to be considered for the listing or delisting of significant trees (see Table E24.1 of the KIPS2015). There are currently 24 listings in Table E24.1. Some of the listings represent more than a single tree (the existing 24 listings represent a total of 425 significant trees).
- 1.3 Anyone can nominate trees to be listed or delisted as significant trees in the planning scheme. Nominations are accepted through-out the year.
- 1.4 Once a tree is listed, it will not be physically sign-posted or demarcated, but details of the listing will be publicised in the planning scheme and on Council's website.
- 1.5 In situations where an immediate risk to public safety from a significant tree is identified the General Manager may respond under delegated authority.
- 1.7 Development applications that may impact or include the removal of a listed tree are required to be assessed against the Significant Trees Code of the KIPS2015.

2. SIGNIFICANT TREE ASSESSMENT

- 2.1 To be listed in the planning scheme, the *Significant Tree Policy* requires that a tree must meet the criteria of one or more categories of significance that will act to set the tree apart from others of its type.
- **Aesthetic significance** - Trees whose form, seasonal beauty and/or placement are such that they are a significant aesthetic component of the streetscape, park, garden or natural landscape in which they grow.
 - **Size (height, circumference, canopy)** - Trees of outstanding dimensions in height, trunk circumference or canopy spread for their species or for the area.
 - **Age** - Trees that are particularly old either for their species or for the area.
 - **Landscape significance** - Trees which occur in a unique location or context and so provide a key contribution to the environmental, cultural and/or historical landscape.
 - **Historical significance** - Trees commemorating a particular broader community interest associated with an historical significance or event.
 - **Rarity of species, variety or genome** - Trees of a species or variety that is rare or of very localised distribution or has known genetic values.
 - **Unusual physical features** - Trees which exhibit a curious growth form or physical feature such as abnormal outgrowths, natural fusion of branches, severe lightning damage or unusually pruned forms.
- 2.2 The policy requires that nominations must be assessed against the above criteria by at least three Council officers with appropriate skills in two or more of the following: arboriculture, cultural heritage, environmental management and urban and/or landscape design. The current round of nominations has been assessed by three or more officers with appropriate skill as required by the policy and they include Council's Parks and Reserve Coordinator, Environmental Planner, NAB Coordinator and Urban Designer.
- 2.3 A total of 33 nominations were received for new listings. Of those, 11 nominations (representing 245 trees) are considered to meet one or more of the categories of significance and are recommended for listing in KIPS2015.
- 2.4 Three nominations were received for delisting. Of those, two are supported for delisting because the trees don't exist anymore.
- 2.5 Two unofficial requests were received to review existing listings.
- 2.6 A summary of all the nominations and Council officer's assessment against the policy criteria is provided in Attachment 1.
- 2.7 An arborist was engaged to assess the health and vitality of all trees supported by Council officers for listing. A summary of the arborist's comments is also provided in Attachment 1.

3. PROPOSED AMENDMENT TO THE PLANNING SCHEME

- 3.1 The proposal is to update the significant tree list in Table E24.1 of the Significant Trees Code in the *Kingborough Interim Planning Scheme 2015* (KIPS2015).
- 3.2 The update will include 11 additional listings, removal of two existing listings and an amendment of 1 existing listing as outlined in Attachment 2 (proposed planning scheme amendment).

4. ASSESSMENT

- 4.1 The proposed planning scheme amendment considers the following matters:
- assessment of nominations against the criteria of the Kingborough Significant Tree Policy;
 - strategic alignment with particular reference to the consistency of the proposal with the *Southern Tasmania Regional Land Use Strategy 2010-2035*, *Kingborough Land Use Strategy 2019*, *Kingborough Council Strategic Plan 2015-2025*;
 - statutory requirements; and
 - impact on state policies.

Assessment of nominations against the criteria of the Significant Tree Policy.

- 4.2 Council officer's assessment of the nominations against the Significant Tree Policy is provided in Attachment 1.
- 4.3 Eleven trees are recommended for listing as they meet the policy criteria.
- 4.4 Two trees are recommended for delisting as they don't exist anymore.
- 4.5 An existing listing (that relates to a grouping of trees) is required to be amended because one of the trees has fallen down.

Strategic alignment

- 4.6 The intent of the proposed planning scheme amendment is to ensure that significant trees are protected and it proposal broadly aligns with the following strategic documents.
- 4.7 The [Southern Tasmania Regional Land Use Strategy 2010-2035 \(STRLUS\)](#) is a policy document that facilitates and manage change and growth within Southern Tasmania. The proposed amendment is not directly related to any of the policy directions contained in the strategy, however it will contribute to the following outcomes sought by the strategy.
- BNV 1.1 Manage and protect significant native vegetation at the earliest possible stage of the land use planning process.*
- BNV 1.2 Recognise and protect biodiversity values deemed significant at the local level.*
- CV 4.2 Ensure the key values of regionally significant landscapes are not significantly compromised by new development through appropriate provisions within planning schemes.*
- 4.8 The [Kingborough Land Use Strategy 2019](#) provides the justification for the way that land is to be zoned in the planning scheme. There are no specific recommendations in relation to significant trees in the strategy, however it expresses Council's support for the protection of vegetation and to improve amenity.
- 4.9 The [Kingborough Council Strategic Plan 2020-2025](#) includes a number of Strategic Outcomes that are listed under the Key Priority Areas that aims to protect and manage the natural environment and to improve the landscape, liveability and amenity.

Statutory requirements

- 4.10 Pursuant to section 32(1) of the former provisions of LUPAA, a draft amendment of a planning scheme must address the following:

- 4.10.1 Section 32(e) of the former provisions of LUPAA requires that planning scheme amendments must avoid the potential for land use conflicts in adjacent planning scheme areas. The proposed amendment will ensure the protection of significant trees through the planning scheme provisions and does not contain any new development standards that may result in land use conflict in adjacent planning scheme areas.
- 4.10.2 Section 32(ea) of the former provisions of LUPAA requires that planning scheme amendments must not conflict with the requirements of section 30O of the former provisions of LUPAA. In turn, Section 30O of the former provisions of LUPAA requires that an amendment to an interim planning scheme is as far as practicable, consistent with the regional land use strategy. The proposal is aligned with the Southern Tasmania Land Use Strategy.
- 4.10.3 Section 32(f) of the former provisions of LUPAA requires that planning scheme amendments must have regard to the impact of the proposal and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms. The proposed amendment will result an additional tree listing in the planning scheme and is not expected to have an impact on development in the region as an entity.
- 4.11 In addition to the above, Section 33(2B)(ab) of the former provisions of LUPAA requires that any representations made under section 30I of the former provisions of LUPAA, and any statements in a report under section 30J of the former provisions of LUPAA as to the merit of a representation, that may be relevant to the amendment application, must be considered. No representations were received during the exhibition of the Scheme which are relevant to the proposed amendment, therefore sections 30I and 30J of the former provisions of LUPAA have been satisfied.
- 4.12 LUPAA requires that planning scheme amendments must seek to further the objectives of Schedule 1 of the former provisions of LUPAA. The following table assess the proposed amendment against the objectives of Schedule 1 of the former provisions of LUPAA.

Schedule 1, Part 1 Objectives	Response
<i>(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity</i>	The planning scheme amendment aims to protect significant trees that will assist in broader sustainable development outcomes and protection of natural assets. The proposal is considered consistent with this requirement.
<i>(b) to provide for the fair, orderly and sustainable use and development of air, land and water</i>	The proposed planning scheme amendment will contribute to the fair, orderly and sustainable use of land. The proposal is considered consistent with this requirement.
<i>(c) to encourage public involvement in resource management and planning</i>	Opportunity for public input will be available through the public consultation process of the amendment as outlined in Section 7 of this report. The proposal is consistent with this requirement.
<i>(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c)</i>	The proposal represents greater clarity for landowners a general community, developers and Council, that in turn will facilitate good economic outcomes whilst avoiding significant environmental impact. The proposal is consistent with this requirement.
<i>(e) to promote the sharing of</i>	The proposal is not considered to conflict with

<i>responsibility for resource management and planning between the different spheres of Government, the community and industry in the State</i>	this requirement
Schedule 1, Part 2 Objectives	Response
(a) <i>to require sound strategic planning and co-ordinated action by State and Local Government</i>	As demonstrated throughout this assessment the proposal is strategically aligned and will ensure certainty and improved strategic outcomes both at State and Local Government level. It is considered consistent with this requirement.
(b) <i>to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land</i>	The proposal is consistent with this requirement.
(c) <i>to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land</i>	The social and economic benefit will be to improve to improve the environmental and amenity outcomes of the municipality through tree protection. The proposal is considered consistent with this requirement.
(d) <i>to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;</i>	The proposal is not considered to conflict with any environmental, social, economic, conservation or resource management policies. The proposal is consistent with this requirement.
(e) <i>to provide for the consolidation of approvals for land use or development and related matters and to co-ordinate planning approvals with related approvals</i>	The proposal furthers Council's Significant Tree Policy and is therefore consistent with this requirement.
(f) <i>to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania</i>	The proposal is not considered to be in conflict of this requirement.
(g) <i>to conserve those buildings, areas or other places which are scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value</i>	The proposal is not considered to conflict with this requirement
(h) <i>to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community</i>	The proposal is not considered to conflict with this requirement
(i) <i>to provide a planning framework which fully considers land capability</i>	The proposal will have no significant impact on land capability.

State Policies

- 4.13 The proposal does not have any implications under the *State Coastal Policy 1996*, *State Policy on Water Quality Management 1997* or the *State Policy on the Protection of Agricultural Land 2009*.

5. PUBLIC CONSULTATION

- 5.1 Landowners were notified of Council's intention to list the subject trees in the planning scheme. Council officers received no opposition from the landowners to any of the listings proposed, however formal notification, as discussed below, will provide landowners with another opportunity to indicate their support or to oppose the listing.
- 5.2 If Council initiates the proposed amendment, it must also certify the draft amendment in accordance with section 35 of the former provisions of LUPAA. Section 38 of the former provisions of LUPAA requires that the proposal be advertised for a period of between 3 weeks and 2 months, as determined by the planning authority.
- 5.3 It is proposed to publicly exhibit the planning scheme amendment for a minimum period of 28 days with notification:
- on the Kingborough Council website and on Council's Facebook page;
 - twice in a newspaper circulating in the area, with one notice to be on a Saturday; and
 - in writing to owners and occupiers for the property and adjoining properties.
- 5.4 A full package of exhibition material will be made available for viewing on the Kingborough Council website and at Customer Service at the Civic Centre in Kingston. This package will include:
- Attachment 1: Council officer's assessment against the Significant Tree Policy;
 - Attachment 2. Draft Amendment to the Kingborough Interim Planning Scheme 2015; and
 - Attachment 3: Instrument of Certification.
- 5.5 Council will review all submissions to the planning scheme amendment and report them to the Tasmanian Planning Commission (the Commission). The report would include the planning authority's views on the merit of each representation, whether the amendment should be modified and the impact of the representation on the amendment.
- 5.6 Once the planning scheme amendment is approved by the Tasmanian Planning Commission, Council will inform the relevant landowners of the outcomes as well as their responsibilities as per the planning scheme. The listing will be contained in the planning scheme and will also be made available on Council's website.
- 5.7 Council intends to undertake an educational program later this year to inform people of the Significant Tree Policy and to encourage additional listings.

6. CRITICAL DATES / TIME FRAMES

- 6.1 If Council supports the amendment, initiates and certifies the amendment for public exhibition, it must advise the Commission within seven days.
- 6.2 Post-public exhibition, Council has 35 days from the close of the notification period to forward its report to the Commission. The Commission may grant an extension of time if requested.

- 6.3 The Commission must complete its consideration and decision process within three months of receiving Council's report on the representations, unless an extension of time has been agreed by the Minister.
- 6.4 If the Commission approves the amendment, the amendment takes effect seven days after being signed by the Commission, unless a date is specified.

7. CONCLUSION

- 7.1 The proposed amendment to the planning scheme is not to introduce new development standards, but to amend Table E24.1 in KIPS by including 11 additional listing, delete 2 existing listing and to amend 1 existing listing.
- 7.2 The trees that are proposed for listing meet the assessment criteria of Council's Significant Tree Policy. The trees that are recommended for delisting no longer exist.
- 7.3 The above assessment demonstrates that the proposed amendment meets all statutory requirements and is a logical amendment to the planning scheme to improve environmental and amenity outcomes for the municipality.

8. RECOMMENDATION

- (a) That Council resolves to support Council officers' assessment of the significant tree nominations against the Significant Tree Policy as per Attachment 1;
- (b) Pursuant to section 34(1) (b) of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council resolve to initiate Amendment PSA-2021-2 to the *Kingborough Interim Planning Scheme 2015* as per Attachment 2;
- (c) Pursuant to section 35 of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council certify that Amendment PSA-2021-2 to the *Kingborough Interim Planning Scheme 2015* meets the requirements of section 32 of the former provisions of the *Land Use Planning and Approvals Act 1993* and authorise the General Manager to sign the Instrument of Certification provided in Attachment 3.
- (d) Pursuant to section 35(4) of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council forward a copy of the draft amendment and the Instrument of Certification to the Tasmanian Planning Commissions within 7 days of certification;
- (e) Pursuant to section 56S of the Water and Sewer Industry Act 2008, Council refers Amendment PSA-2021-2 to TasWater; and
- (f) Pursuant to section 38 of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council place Amendment PSA-2021-2 to the *Kingborough Interim Planning Scheme 2015* on public exhibition for a period of at least 28 days following certification.

ATTACHMENTS

1. **PSA-2021-2 Significant Tree Assessment against Council's Significant Tree Policy**
2. **PSA-2021-2 Draft Planning Scheme Amendment**
3. **PSA-2021-2 Instrument of Certification**