

19.3 VEGETATION PROTECTION ORDER VPO000028 – ORMISTON LAND

Objective Reference:**Authorising Officer:** Louise Rusan, General Manager Community & Customer Services**Responsible Officer:** Graham Simpson, Group Manager Environment & Regulation**Report Author:** Candy Daunt, Senior Advisor Environment**Attachments:** 1. Site plan and elevations - aerial photos

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Regulation 2012*, the information to be received, discussed or considered in relation to this agenda item is:

- (h) *other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.*

PURPOSE

To outline the rationale and consideration for a proposed interim Vegetation Protection Order (VPO) for significant trees located on adjoining properties at [REDACTED] which is described as lots [REDACTED] (the land).

BACKGROUND

Council adopted *Local Law No. 6 Protection of Vegetation* (Local Law 6) in 1998 as a mechanism to protect vegetation primarily through a declaration of a VPO. Local Law 6 sets out a specific process for making a VPO, including Council making a resolution that the vegetation that is the subject of a proposed VPO satisfies the criteria as significant vegetation as defined in the Local Law.

At the General Meeting on 12 February 2020 (Item 18.1) in confidential session a request for an item of urgent business without notice by Division 1 Cr Wendy Boglary was granted by Council relating to the land. The urgent business item sought to place an interim VPO on significant trees located on the land. Council resolved to request the Chief Executive Officer to prepare an urgent report for the next General Meeting (26 February 2020) on vegetation protection in Ormiston.

ISSUESMaking on an interim VPO

Any person may apply to have a VPO placed on significant vegetation on private land. For tracking purposes, Council has allocated the reference number of VPO000028 to this request.

In the making of a VPO, Council may resolve to apply an interim VPO which remains in place for up to six (6) months while the requirements for establishing a final VPO can be undertaken. These requirements include notifying the property owner, public notification, calling for public submissions and commissioning an expert report. The interim VPO ensures that the vegetation is protected during this time. Once Council has considered all necessary information it may at a subsequent General Council meeting confirm or revoke the VPO.

Planning Scheme considerations

In accordance with Division 3, Section 37 of the *Local Government Act 2009* a local government cannot make a local law that establishes a development assessment process that is similar or

duplicates all or part of the development process under the City Plan. As a result, a local law has no effect to the extent that it is contrary to this section.

The City Plan has an established development assessment process for the clearing of vegetation in Redland City. The Environmental Significance Overlay manages development to avoid, minimise and mitigate significant impacts for matters of national, state and local environmental significance.

Accordingly, an alternative development assessment process to protect the environmental significance of the vegetation on the land cannot be put in place under Local Law 6. Instead, a VPO to protect the significant vegetation on the land should only be made on criteria other than environmental significance to avoid the risk of duplicating the purpose of City Plan provisions.

It should be noted that the vegetation on the subject lots has previously been identified as a matter of local environmental significance through background investigations for the City Plan. However, the subject properties were not included in the final mapping as a matter of local environmental significance based on Council's decision in drafting the City Plan to not identify matters of local environmental significance on any urban residential lots less than 1000m².

Further, while the subject lots were identified in the superseded Redlands Planning Scheme as Koala Habitat in the Habitat Protection – Bushland Habitat Overlay, it is very unlikely this would have resulted in the retention of the existing trees on the subject lots recognising the residential zoning and the small size of the lots. Instead, only offset planting would generally have been required.

Of note, the lots that make up the land have been in existence with residential development potential since 1915.

Grounds for the VPO

The identified significant trees are located across multiple properties under one ownership. The trees are predominantly scattered mature eucalypt species which provide a significant greenspace in that part of Ormiston. The trees provide a landscape feature that is relatively unique on private land, which adjoins Council parkland and habitat refuge areas to the east and south-east. Please note Attachment 1 shows location and elevations of the mature vegetation cover that would be protected under any VPO made by Council.

Many long-term local residents would have seen the vegetation on the land mature over decades, whilst newer residents may believe the land forms part of the existing public space corridor in the local area. The combined area of the lots (11,412m²) and contiguous nature of the land is a significant feature within that part of Ormiston.

Local Law 6 defines 'significant vegetation' by providing a range of criteria (a) to (s). In this particular case the following grounds are considered relevant to any declaration of a VPO:

- a) *a valuable part of the natural heritage of the area; or*
- f) *of cultural significance because of its significance in Aboriginal rituals, religious observance or legend; or*
- m) *important for its aesthetic value or its beneficial effect on the amenity of the locality in which it is situated; or*
- n) *important for its age, height, trunk circumference, or canopy spread.*

Local Law 6 exemptions

Local Law 6 not only provides a mechanism for protecting significant vegetation but also lists a number of exemptions that may apply to protected vegetation without the need to apply for a permit to Council.

As such, Subordinate Local Law 6 permits damage to protected vegetation under the following circumstances:

(b) if the damage is:-

- *within ten (10) metres of a constructed dwelling house lawfully in existence at the date of commencement of this Local Law;*
- *within three (3) metres of a building or structure (other than a dwelling or fence) or the foundations of a building or structure (other than a dwelling or fence) lawfully in existence at the date of commencement of this Local Law;*
- *within three (3) metres of the site of a proposed building or structure (other than fence) in respect to which a development permit or preliminary approval has been granted under the provisions of the Integrated Planning Act 1997 (as amended from time to time) to the carrying out of work pursuant to the provisions of the Building Act 1975 and Standard Building Local Laws as amended from time to time;*
- *within three (3) metres of the boundary between land under separate ownership and is reasonably necessary for erecting or maintaining a dividing fence;*
- *within three (3) metres of the boundary between land under separate ownership and is reasonably necessary for a survey of the boundary by a registered surveyor; and*
- *within three (3) metres of the boundary between land under separate ownership and is reasonably necessary to establish or maintain a fire break*

except where a vegetation protection order has been declared for the express purpose of protecting such vegetation.

Therefore, given the scattered nature of the vegetation across the land, it would be recommended that a condition under an interim VPO would be that damage to the trees is only permitted “if the damage is allowed under a permit issued by Council under the provisions of this Local Law”.

This would ensure effective protection of the very mature trees at the western end of the land and trees along the southern boundary. Should the exemptions listed above not be removed as part of the resolution to declare a VPO, then the effectiveness of any VPO is diminished if the aim is to keep intact the greenspace and landscape value of the trees.

While Council may declare a VPO removing the above exemptions, it cannot remove the provision of Subordinate Local Law 6 which allows vegetation clearing on the following basis:

*(a) if the damage is reasonably necessary for carrying out work authorised or required under an Act:-
Examples:*

- *road, water supply, sewerage or drainage work for which all necessary statutory approvals have been obtained; and*
- *work authorised by development approval.*

This essentially means that should the land owner obtain building approvals on the land, protected vegetation would be able to be cleared in accordance with the approved building footprint as well as locations that facilitate access (driveway) and connection to infrastructure.

In this scenario, given the predominant lot sizes, this would lead to much of the vegetation intended for protection being cleared.

On this basis, it is considered that declaring an interim VPO will not provide long-term protection of the vegetation given the number and size of the lots. Therefore declaration of an interim VPO is not recommended.

Notice of Order

If Council resolves to begin action to protect the vegetation, the owner of the land will need to be given written notice of the Order. In addition, public notice of the Order must be advertised in the local newspaper. One requirement of the notice is to invite submissions for or against the Order.

Expert Report

An expert report must be undertaken within the six month interim VPO period. This report will assess the vegetation against the significant vegetation criteria listed as the basis for an interim VPO as well as clearly identifying and locating via Global Positioning System (GPS) the vegetation to be protected.

STRATEGIC IMPLICATIONS

Legislative Requirements

Local Law No. 6 Protection of Vegetation provides the power for Local Government to make VPOs for significant vegetation, as defined by Local Law 6, on private freehold land.

Any declaration of a VPO is fettered by Division 3, Section 37 of the *Local Government Act 2009* as a local government cannot make a local law that establishes a development assessment process that is similar or duplicates all or part of the development process under a planning scheme.

Risk Management

The risk of not making an interim VPO may be the removal of significant trees which are known to be important to the local community. Recent information would suggest that there is the potential that development may occur on the land in the foreseeable future. How the development may impact existing trees is unknown and a matter for the land owner.

Should an interim VPO not be declared, it is also considered appropriate that the community be informed about the relevant facts and circumstances that relate to the trees on the land and the potential it may be cleared in the future.

Financial

Council costs associated with making an interim VPO would be in the vicinity of [REDACTED] for the preparation of an expert report and advertising of the public notification notice. Ongoing costs to Council, should the order be confirmed, will be associated with in-kind support (advice) to the owners when required from Council's arborist.

There is no budget allocated for the above and costs will need to be absorbed into existing budgets.

People

There will be additional work required by staff to manage the interim VPO process as outlined in Local Law 6.

Environmental

The identified vegetation does provide habitat to the vulnerable koala population and provides linkages to existing environmental corridors. Whilst the vegetation is considered to have environmental significance it is not the basis for Council to consider a VPO for the land.

Social

This vegetation contributes to the character of the area which has been identified in this report.

Human Rights

There are no known human rights implications associated with this report.

Alignment with Council's Policy and Plans

This report aligns with a number of Council policies and plans. These primarily include:

- Wise Planning and Design and Healthy Natural Environment outcomes of the *Corporate Plan 2018-2023*.
- *Natural Environment Policy (POL 3128)* commits Council to protect, enhance and restore the natural values of the City for visitor appreciation.

CONSULTATION

| Consulted | Consultation Date | Comments/Actions |
|---|-------------------|--|
| Service Manager Strategic Planning, Community and Customer Services | 13 February 2020 | Provided City Plan and Local Government Act context. |
| City Planning and Assessment Officers | 17 February 2020 | Comments in regards to content of report. |

OPTIONS

Option One

That Council resolves as follows:

1. To not make an interim Vegetation Protection Order under the provisions of *Local Law No. 6 Protection of Vegetation* on the identified significant vegetation as described in this report for the land.
2. To release this report and attachment from being confidential items.

Option Two

That Council resolves as follows:

1. To make an interim Vegetation Protection Order under the provisions of *Local Law No. 6 Protection of Vegetation* for the identified significant vegetation on the land.

2. That damage to the vegetation is only permitted under Section 27 (J) '*if the damage is allowed under a permit issued by Council under the provisions of this Local Law*'.
3. To maintain this report and attachment as confidential until the details of the interim Vegetation Protection Order contained within this report has been finalised and the landowner has been officially notified subject to maintaining the confidentiality of legally privileged, private and commercial in confidence information.

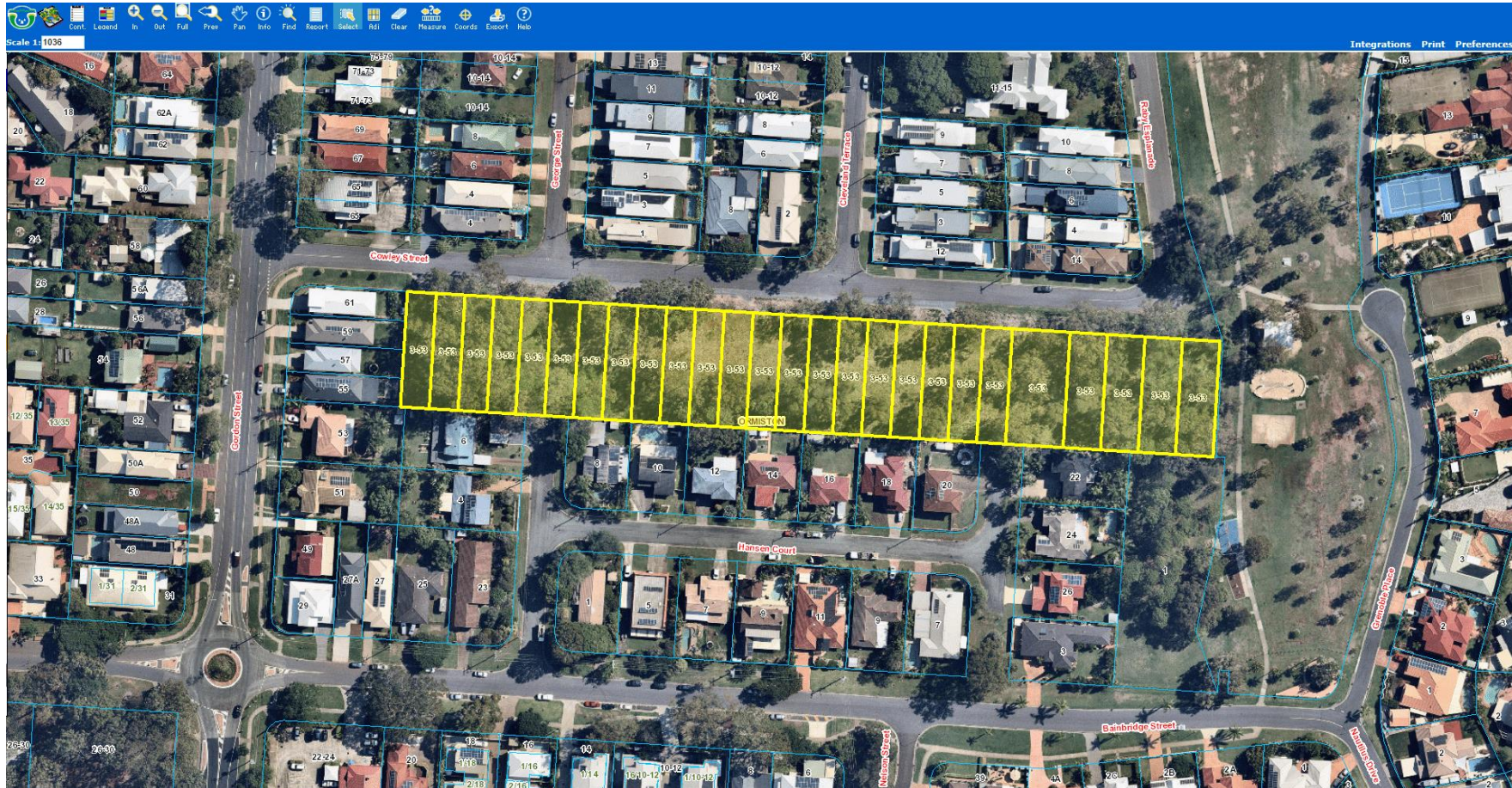
OFFICER'S RECOMMENDATION

That Council resolves as follows:

1. **To not make an interim Vegetation Protection Order under the provisions of *Local Law No. 6 Protection of Vegetation* on the identified significant vegetation as described in this report for the land.**
2. **To release this report and attachment from being confidential items.**

Attachment 1 - 3-53 Cowley Street Ormiston

Site plan



Aerial elevation (looking east and north across site)

