

## ITEM NUMBER: 18.1

### ADJOURNED - CONFIDENTIAL REPORT

#### REQUEST TO REMOVE SIGNIFICANT TREE IN FRONT OF 10A AUGUSTA STREET, GLENELG

*Pursuant to Section 90(3) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:*

- i. information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council.

#### Recommendation – Exclusion of the Public – Section 90(3)(i) Order

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 407/21 Adjourned Report - Request to Remove Significant Tree in front of 10a Augusta Street, Glenelg in confidence.
  2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 407/21 Adjourned Report - Request to Remove Significant Tree in front of 10a Augusta Street, Glenelg on the following ground:
    - i. pursuant to section 90(3)(i) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information relating to potential litigation that the Council believes on reasonable grounds will take place involving the Council if the tree is not removed, which will be discussed, and this information ought not be made available to the public as it could be detrimentally affect the Council's position if litigation is progressed.
  3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: 18.1

Subject: **ADJOURNED REPORT - REQUEST TO REMOVE SIGNIFICANT TREE IN FRONT OF 10A AUGUSTA STREET, GLENELG**

Date: 14 December 2021

Written By: Team Leader, Environment and Coast

General Manager: Assets and Delivery, Mr M de Heus

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### SUMMARY

Botten Levinson Lawyers on behalf of the resident of 10A Augusta Street Glenelg has presented a written request for Council to remove a mature Southern Mahogany (*Eucalyptus botryoides*) tree (the tree) in front of 10a Augusta Street, Glenelg.

This report was most recently tabled at the ordinary meeting of Council on 9 November 2021 (Item 18.1 Request to Remove Significant Tree in front of 10a Augusta Street, Glenelg Report No: 347/21) and was adjourned under Regulation 19, *Local Government (Proceedings at Meetings) Regulations 2013*, to allow Council to contact the Strata Manager of Strata 4629 to confirm that the strata group was aware of the request for the tree removal and had been notified of Council's offer to provide root barrier, at Council's cost, for the common property of strata group 4629.

The item was adjourned before the motion was moved or seconded, so no one spoke to the motion at the previous meeting.

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### RECOMMENDATION

#### That Council:

- 1 **having considered the application from Botten Levinson Lawyers on behalf of the resident of 10A Augusta Street, decline the request to provide landowner's consent to remove the significant tree in front of 10A Augusta Street, Glenelg and advise the applicant accordingly.**

#### **RETAIN IN CONFIDENCE - Section 91(7) Order**

2. **having considered Agenda Item 18.1 Report No: 407/21 Adjourned Report - Request to Remove Significant Tree in front of 10A Augusta Street, Glenelg in confidence under section 90(2) and (3)(i) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act, orders that the Report and Attachments be retained in confidence until further notice and the Chief Executive Officer is authorised to release the documents when the matter is concluded, giving due consideration to any relevant legal considerations, and that this order be reviewed every 12 months.**
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Placemaking: Developing walkable connected neighbourhoods  
Placemaking: Building character and celebrating history  
Community: Building a healthy, active and resilient community  
Environment: Protecting Biodiversity  
Environment: Building an environmentally resilient city  
Environment: Fostering an environmentally connected community

## **COUNCIL POLICY**

Tree Management Policy  
Environment Strategy 2020-2025

## **STATUTORY PROVISIONS**

*Local Government Act 1999*  
*Planning, Development and Infrastructure Act 2016*

## **BACKGROUND**

In October 2021, Council received a written request to remove a significant tree in front of 10A Augusta Street, Glenelg, from Botten Levinson Lawyers (the applicant) on behalf of the resident of 10A Augusta Street Glenelg (the resident)). This letter provided additional information following a letter from the applicant in July 2021.

A confidential report was most recently tabled at the ordinary meeting of Council on 9 November 2021 (Item 18.2 Request to Remove Significant Tree in front of 10a Augusta Street, Glenelg Report No: 347/21) and was adjourned under Regulation 19, Local Government (Proceedings at Meetings) Regulations 2013, to allow Council to contact the Strata Manager of Strata 4629 to confirm that the Strata group was aware of the request for the tree removal and had been notified of Council's offer to provide root barrier, at Council's cost, for the common property of strata group 4629.

*Refer Attachment 1*

## **REPORT**

A letter was sent to the Strata Manager dated 12 November 2021 requesting confirmation that the Strata group were aware of the request to remove the tree and that an offer had been submitted to the Strata group for tree root barrier at Council's cost.

*Refer Attachment 2*

The Strata Manager (Jack Wilkins, Horner Management) advised via email 19/11/2021:

*'I am the current Strata Manager for this corporation and am aware Ms Christine Grant has made the application to remove this tree and believe the strata has done this in the past also.*

*The tree has caused significant damage to both the driveway and the carport of unit 10A owner Christine Grant which is the reason for wanting this tree removed as it continues to damage the property'.*

*and*

*'I can confirm the corporation and the Strata Manager discussed the root barrier offer and were provided the letter from the Council via email from Christine.*

*I know the corporation spoke of the offer and they believed it would not stop the issue as roots had already travelled under the house so the root barrier would not have stopped the issue which is why Christine has continued to move forward with removal by herself with prejudice.*

*The previous manager (Danish) no longer works at Horner Management however Luke who also managed them after Danish left was also aware of the root barrier offer and he stated it was brought up in discussion with owners which was later denied and the corporation agreed to let Christine act solely on the situation going forward which is noted in the most recent minutes'*

Based on the above email, it is clear that the Strata group are aware of the request to remove the tree, are supportive of the removal and are also aware of the offer for root barrier, which was declined. It was also noted that the resident of 10A is approved to act solely on the situation going forward, which is noted in the most recent minutes.

Council staff have reviewed the response from the Strata Manager and does not believe that this alters the recommendation that Council does not provide landowner consent for the removal of the significant tree.

Whilst Council can re-offer to cover the costs of the supply and installation of the root barrier, this has been rejected by the Strata group and is not supported by the arboricultural advice provided by the applicant.

#### **BUDGET**

There is no specific budget for tree removal but if an application for removal were to be approved, the removal is estimated to cost in the order of \$6,000 and would be removed by Council at its own cost. The three replacement trees would cost approximately \$1000 and be planted either by a contractor or by the Open Space Tree Team in winter.

#### **LIFE CYCLE COSTS**

If new trees are provided, life cycle costs include formative pruning and at least three years of watering early in their life, depending on the species.

# Attachment 1



## ITEM NUMBER: 18.2

### CONFIDENTIAL REPORT

#### REQUEST TO REMOVE SIGNIFICANT TREE IN FRONT OF 10A AUGUSTA STREET, GLENELG

*Pursuant to Section 90(3) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:*

- i. information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council.

#### Recommendation – Exclusion of the Public – Section 90(3)(i) Order

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 347/21 Request to Remove Significant Tree in front of 10a Augusta Street, Glenelg in confidence.
  2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 347/21 Request to Remove Significant Tree in front of 10a Augusta Street, Glenelg on the following ground:
    - i. pursuant to section 90(3)(i) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information relating to potential litigation that the Council believes on reasonable grounds will take place involving the Council if the tree is not removed, which will be discussed, and this information ought not be made available to the public as it could be detrimentally affect the Council's position if litigation is progressed.
  3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: 18.2

Subject: **REQUEST TO REMOVE SIGNIFICANT TREE IN FRONT OF 10A AUGUSTA STREET, GLENELG**

Date: 9 November 2021

Written By: Team Leader, Environment and Coast

General Manager: Assets and Delivery, Mr M de Heus

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### **SUMMARY**

Botten Levinson Lawyers on behalf of the resident of 10A Augusta Street Glenelg has presented a written request for Council to remove a mature Southern Mahogany (*Eucalyptus botryoides*) tree (the tree) in front of 10a Augusta Street, Glenelg.

In accordance with Council's Tree Management Policy the request must be considered by Council as the tree is 'Significant' under the *Planning, Development and Infrastructure Act 2016*, which means the request must also be approved through the development process, subject to Council approval.

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### **RECOMMENDATION**

That Council,

- 1 Having considered the application from Botten Levinson Lawyers on behalf of the resident of 10A Augusta Street, decline the request to provide landowner's consent to remove the significant tree in front of 10A Augusta Street, Glenelg and advise the applicant accordingly.

### **RETAIN IN CONFIDENCE - Section 91(7) Order**

2. That having considered Agenda Item 18.2 Report No: 347/21 Request to Remove Significant Tree in front of 10A Augusta Street, Glenelg in confidence under section 90(2) and (3)(i) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act, orders that the Report and Attachments be retained in confidence until further notice and the Chief Executive Officer is authorised to release the documents when the matter is concluded, giving due consideration to any relevant legal considerations, and that this order be reviewed every 12 months.
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**COMMUNITY PLAN**

Placemaking: Developing walkable connected neighbourhoods

Placemaking: Building character and celebrating history

Community: Building a healthy, active and resilient community

Environment: Protecting Biodiversity

Environment: Building an environmentally resilient city

Environment: Fostering an environmentally connected community

**COUNCIL POLICY**

Tree Management Policy

Environment Strategy 2020-2025

**STATUTORY PROVISIONS**

*Local Government Act 1999*

*Planning, Development and Infrastructure Act 2016*

**BACKGROUND**

In October 2021, Council received a written request to remove a significant tree in front of 10A Augusta Street, Glenelg, from Botten Levinson Lawyers (the applicant) on behalf of the resident of 10A Augusta Street Glenelg (the resident)). This letter provided additional information following a letter from the applicant in July 2021.

*Refer Attachment 1*

The tree is a mature Southern Mahogany (*Eucalyptus botryoides*). The applicant claims the tree's roots have caused damage to the resident's property.

Council is indemnified by the Local Government Association Mutual Liability Scheme (the Scheme), which is managing any liability issues directly with the applicant. Councils have immunity from liability for damage to property that results from a tree under section 245 of the *Local Government Act 1999*. This report does not need to consider liability issues as this is a matter for the Scheme to manage but Council is required to consider the request to remove the tree in accordance with Council's Tree Management Policy (the Policy).

*Refer Attachment 2*

The issue with the tree was first raised with Administration in December 2016. Between June 2016 and May 2017 the powerlines that had previously run through the tree's canopy were put underground. In 2017 the resident again contacted Administration about the tree and this time pruning was advised. The tree was subsequently pruned in May 2017 with the understanding that no pruning would remediate the resident's issue.

In October 2018 the resident obtained a report from an independent arborist.

*Refer Attachment 3*



From January 2019 further correspondence was initiated between the resident and Council regarding the tree. The resident wanted to install a new front fence but could not do so without removing some of the roots, which cannot be done due to the significant status of the tree. A professional report on the health, structure and risk status of the tree was commissioned by Council, including recommended actions. The report was provided by Symatree. The tree was found to be in good health with no notable defects, worthy of retention, and of a low risk rating using the International Society of Arboriculture tree risk assessment method. The report recommended minor pruning in accordance with Australian Standard AS 4373-2007 Pruning of Amenity Trees.

*Refer Attachment 4*

The report also considered root barrier installation and stated that the tree would tolerate this if installed along the edge of the building's footing and all reasonable measures and precautions are taken to protect the subject tree during its installation. This would include the use of hydro vac to excavate a trench and root pruning by a Level 5 arborist.

In an email from the resident in May 2019, the resident stated that Council's Technical Arboriculture Officer (now Senior Urban Forest Officer) had suggested installing a root barrier. In September 2019, a letter from the General Manager, City Assets and Services, put this offer in writing. However, the arborist report that the resident had commissioned, stated that this would not be practical and the resident has not accepted this option. Dean Nicolle in his arboricultural advice for the applicant dated 1 October 2021 did not support the installation of root barrier.

*Refer Attachments 1, 3 (page 5) and 5*

This matter was also brought to Council's attention in late September 2019 via email from the General Manager, City Assets and Services.

*Refer Attachment 6*

In October 2019 the resident obtained a 'Causation Report' from a civil and structural engineer in which it states 'It is CRD's opinion that the cracking arch of the carport has been caused by direct physical contact of tree roots emanating from the very large tree in the Augusta Street verge'.

Council received new correspondence from Botten Levinson Lawyers dated 6 October 2021 which included an additional arborist report dated 1 October 2021 from Dean Nicolle and an engineer's report from Fyfe dated 1 October 2021.

*Refer Attachment 1*

## **REPORT**

According to clause 2.7 of Council's current Tree Management Policy a tree removal request must be approved for removal by Council resolution.

Clause 2.7a in the Policy states that all requests for removal of a healthy and structurally sound Regulated or Significant tree, must be accompanied by a report from a qualified professional (i.e. an Arborist). A copy of such a report that was commissioned by the resident is attached.

*Refer Attachment 3*

Clause 2.7b states that all requests for the removal of a complying street tree species that is considered structurally sound and healthy will be referred to Council for a decision. Both arborist reports state that the tree is in good health and structure, therefore Administration is referring this decision to Council.

As the tree is significant, if Council decides to grant landowner consent to the request for its removal, a Development Application will then be submitted for assessment against the relevant provisions of the Planning and Design Code (formerly the Development Plan). Part of the development assessment will involve consideration of separate new technical reports from an independent arborist and consulting engineer. The arborist will assess the tree's health, lifespan and propensity to continue its invasive growth, whilst the consulting engineer will focus their attention on whether the tree is causing significant structural damage to the dwelling and associated garage (noting that attention cannot be paid to damage caused to either the driveway or the front fence in the context of a development assessment). It is worth noting that since the introduction of the Planning and Design Code on 19 March 2021, development applications for the removal of significant street trees no longer require public consultation, meaning that the community does not have to be engaged as part of the decision making process.

Note that the current Tree Management Policy refers to the previous Development Act 1993, which is no longer extant and has been superseded by the *Planning, Development & Infrastructure Act 2016*. The City of Holdfast Bay Tree Management Policy is currently being reviewed and updated.

Council is attempting to reach a 10% tree canopy increase target, as per its Environment Strategy 2020-2025, and more broadly as a contribution to the 30 Year Plan for Greater Adelaide canopy target of a 20% increase in urban green cover by 2045. Trees such as this one, with a very large canopy are an essential component of our current canopy, especially in Glenelg where the average canopy cover for the suburb is just 11%. Trees and tree canopy such as that provided by this large tree is of benefit to the community in many ways such as providing a large area of cooling shade over the street and the house, providing habitat for birds and insects, improving air quality and contributing to good mental health. Using the revised Burnley method, the amenity value of this tree has been estimated at a value between \$175,000 and \$200,000. It should also be noted that in metropolitan Adelaide the loss of mature trees is outpacing the growth of new trees. Trees were the number one topic mentioned in all community engagement during the development of the Environment Strategy. Following undergrounding of powerlines, this tree is not likely to be pruned by SA Power Networks.

Clause 2.8 of the current Policy states that a Significant tree that is removed by Council will be replaced either with three trees with the potential to become significant at a nearby reserve, or replace the tree and plant two additional trees with the potential to become significant at a nearby reserve. However, this clause was aligned with the previous *Development Act 1993*. Section 127 (4) of the new *Planning, Development & Infrastructure Act 2016* states that if a relevant authority approves the removal of a significant tree, then three trees must be planted to replace it. Many of the other trees in the street are Norfolk Island pines, therefore if Council were to approve application to remove the tree, this tree could be replaced with another Norfolk Island Pine to fit with the character of the street. We would also need to identify locations for two additional trees, which do not have to be street trees but instead could be trees located in a park,

where they have the potential to become significant. This is in accordance with clause 2.8 of the Policy.

Council has undertaken reasonable steps to attempt to resolve the matter with the resident. However, despite these attempts the matter has not been resolved to the satisfaction of the resident. While Administration understands and has considered the position of the resident, it recommends to Council, as assessments indicate the tree is of good health, not provide landowner's consent to remove the tree. Administration is concerned that consent to remove this tree risks setting a precedent that has the potential to result in further requests for the removal of regulated or significant trees. In addition, Council has committed to increasing tree canopy across the City by 10%. The preservation of existing healthy trees is a key element to the ability of Council to achieve this target.

If Council decides to provide land owner's consent, and subsequently the development application is approved, Administration will undertake targeted communication with surrounding land owners regarding the removal of the tree.

#### **BUDGET**

There is no specific budget for tree removal but if the application for removal were to be approved, the removal is estimated to cost in the order of \$6,000 and would be removed by Council at its own cost. The three replacement trees would cost approximately \$1000 and be planted either by a contractor or by the Open Space Tree Team in winter.

#### **LIFE CYCLE COSTS**

If new trees are provided, life cycle costs include formative pruning and several years of watering early in its life, depending on the species.

# Attachment 2



12 November 2021

The Manager  
Strata Plan 4269  
?  
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Dear Sir / Madam

**RE: Application for Tree Removal – 10 Augusta Street Glenelg (Strata Plan 4269)**

The City of Holdfast Bay has received a request to remove a significant tree outside 10 Augusta Street Glenelg (specifically outside 10a / 10b). The request has come via lawyers representing one of the strata plan owners (applicant). This request will be considered by Council in the near future.

As the strata plan manager for Strata Plan 4269 is not recorded with Council, we are writing to each of the strata plan owners individually.

As background, a request for removal of the mature Southern Mahogany tree in the verge in front of 10a Augusta Street has been received. As the tree is significant (under the *Planning Development and Infrastructure Act 2016*), the request must be assessed and approved through the development process subject to Council approval as landowner. The issue with the tree was first raised in 2016 and between 2016 and the current time, various discussions and options have been discussed between Council staff and the applicant to reduce inconvenience and possible effect on structures and the land as a result of the tree. One of the options was to install root barrier within the property in the strata common property in front of units 1 and 2 (10a and 10b) and this was offered in writing in September 2019. This was not accepted at the time by the applicant.

As the tree is within Council road reserve and is considered healthy and structurally sound, under Councils Tree Management Policy, any application must be submitted to Council for a decision. As the tree is significant, if Council, as land owner, decides to grant landowner consent, a development application will then be submitted which would be assessed against the provisions of the Planning and Design code, which would include consideration of technical reports from an independent arborist and structural engineer.

To allow Council to make an informed decision, we are now seeking advice from the Strata Plan Manager (ie the manager responsible for the common property) whether this request for root barrier in September 2019 and/ or the request for tree removal was considered by the overall strata plan in any of its meetings and whether this was recorded and any decisions made.

We would appreciate your response and any copies of discussions and decisions so that the matter could be considered in confidence by Council at its next available meeting. To meet the Council meeting date of 7 December 2021, we would require your response by Monday 22 November 2021.

Please email the undersigned [mdeheus@holdfast.sa.gov.au](mailto:mdeheus@holdfast.sa.gov.au) or phone 8229 9944 if you wish to discuss, have any queries or to respond to this letter.

Yours sincerely,

Michael de Heus  
**General Manager**  
**Assets & Delivery**

SAMPLE