

## 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 1



Our ref: SM/220024

6 October 2021

Mr Roberto Bria  
The Chief Executive Officer  
City of Holdfast Bay  
PO Box 19  
BRIGHTON SA 5048

**By email: [mail@holdfast.sa.gov.au](mailto:mail@holdfast.sa.gov.au)**

Dear Mr Bria

**Council street tree adjacent 10A Augusta Street, Glenelg**

I refer to our previous correspondence in relation to the above and confirm we continue to act for Ms Christine Grant, the owner and occupier of 10A Augusta Street, Glenelg.

As you are aware, our client has requested the Council to remove the Southern Mahogany Council street tree adjacent her property (**the Tree**) due to the significant damage the Tree has caused, and continues to cause, her property.

We are advised by Council staff that the Council intends to meet to determine whether to grant 'owner consent' for the removal of the Tree (**Owner Consent**). Further, we understand that if Owner Consent is granted, Council intends to lodge a development application seeking development approval to remove the Tree.

Further, we are advised that a report will be prepared by a member of Council's 'Tree Team' regarding the matter for the elected members' consideration.

The purpose of this letter is to provide background to the matter for Council's 'Tree Team' and the elected members **and** to provide expert advice recently obtained from:

1. Dr Dean Nicolle, an arborist, botanist and ecologist specialising in the systematics and ecology of the eucalypts and in the arboricultural assessment of trees; and
2. Mr Trevor John, principal structural engineer at 'Fyfe'.

**Background**

1. Our client purchased her property in 2014.
2. Our client understands that the photo at **Enclosure 1** to this letter was taken in or around 2014. It appears from the photo that no damage to our client's property was present at this time.

Level 1 Darling Building  
28 Franklin Street, Adelaide  
GPO Box 1042, Adelaide SA 5001  
t. 08 8212 9777  
e. [info@bllawyers.com.au](mailto:info@bllawyers.com.au)  
[www.bllawyers.com.au](http://www.bllawyers.com.au)



3. Our client first noticed damage to her property from the Tree's roots in or around 2016, namely damage to the front, northern fence and her concrete driveway.
4. Our client first raised concerns with the Council about the damage the Tree was causing to her property in or around December 2016.
5. In October 2018, our client obtained a report from a qualified and experienced arborist, Mark Eitzen of Acer Horticultural Services. Mr Eitzen's report relevantly provides as follows:

***“Conclusions:***

- *The roots for the council street tree are responsible for the damage observed as stated.*
- *I would consider the extensive lifting and cracking of the concrete driveway and the exposed surface roots in the lawn as a tripping hazard.*
- *It would not be reasonably practical to repair/replace the driveway or reinstate a lawn or landscape the front area to create a garden without cutting and removing the roots of the tree.*
- *The volume of tree roots that would have to be cut and removed would result in the decline of tree health and ultimately the demise of the tree.*
- *It may be possible to install a root barrier to prevent potential damage to the footing of the house and potential future damage to a new driveway, although it would not be practical as this would involve cutting a large volume of roots that would be detrimental to the trees health and not resolve the problem of the numerous exposed surface roots in the lawn.*
- *It would not be possible [to] cut or remove the numerous tree roots within the lawn area as this would result in the decline of tree health and ultimately the demise of the tree.*
- *...”*

6. In or around April 2019, our client observed cracking at the crown of the archway of her carport.
7. Our client is in receipt of a “Causation Report” dated October 2019 prepared by a civil and structural engineer at “CRD Building Consultants and Engineers”. Notably, that report concludes that:

*“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 pressing up onto the underside of the footing system supporting the arch.”*

8. In or around early 2019, our client, again, advised Council of her concerns about the damage the Tree's roots were causing to her property. Our client asked Council to compensate her for this damage.

9. We understand that in response to our client's communications in/around early 2019, the Council obtained an arborist's report from "Symatree" dated 8 June 2019. The Symatree report provides that:

- 9.1. a tree root barrier could be installed, which might prevent or negate any further damage to our client's property; and
- 9.2. *"it is reasonable to predict that the tree will tolerate the installation of a root barrier if installed along the edge of the unit's footing and all reasonable measures and precautions are taken to protect the subject tree during its installation (i.e. the width of the trench is kept to an absolute minimum)".*

10. By letter to our client dated 8 January 2020, the Council's insurer advised that:

**"We confirm our Claims Investigator has inspected your property and has observed visible evidence of damage caused by tree root activity to both your front fence and driveway. ... We nonetheless accept that tree root activity has caused the damage complained of.**

*Whilst damage is observed to the fence and driveway, the provisions of Section 245 of the Local Government Act support that Council is not liable for damage caused to property by tree roots. Unfortunately we are therefore unable to accept your claim.*

*Moving forward, and in recognition of the issues and difficulties you have experienced, we confirm that Council is nonetheless prepared to maintain its offer of assistance, in terms of the provision and installation of a tree root barrier (as per the terms set out to you in Council's letter of September 2019). We confirm that this offer remains open to you for acceptance. We ask that you please liaise directly with Council regarding arrangements of the same.*

*We understand that the installation of a root barrier should negate, and hopefully prevent any future issues (in terms of tree roots impacting the main structure of your property)."*

(our emphasis)

11. By letter to you dated 2 July 2021, we invited Council to reconsider its position and requested it to remove the Tree and compensate our client for the reasonable costs to repair the damage to her property caused by the Tree. Within our letter, we referred to the recent decision handed down by the County Court of Victoria in *Angela Frances Livingston v City of Melbourne [2020] VCC 1775*. This decision was made post the Council's insurer's response to our client of 8 January 2020. The *Livingston* case, in our view, is completely relevant and instructive to the matter at hand. The Court in *Livingston* found that the Council had caused a nuisance to Ms Livingston by planting a tree in the Council verge adjacent her dwelling. The Council was found guilty of the tort of nuisance as it had substantially interfered with the dwelling owner's enjoyment of the dwelling and she suffered damage as a result. The street tree had caused property damage which ultimately resulted in the need for Ms Livingston to demolish and rebuild her dwelling. The Court awarded Ms Livingston \$453,538.83 in damages.

12. The Council's insurer responded to our letter of 2 July 2021 advising it would not compensate our client for the reasonable costs to repair the damage to her

property caused by the tree but would commence the process for the removal of the Tree. Notably, the Council's insurer made the following comments in relation to the *Livingston* case referenced above:

*"In terms of the decision in Livingston v City of Melbourne [2020] 1775, upon which you rely, we consider the same to be a rogue Judgment, which in any event sits within an unrelated jurisdiction with different legislation, and is therefore wholly irrelevant. It has no basis for any consideration within the South Australia jurisdiction."*

It is not clear to us what is meant by a "rouge Judgment". Nor do we understand why it is said that it is "wholly irrelevant" or "has no basis for any consideration within the South Australia jurisdiction". Indeed, we note and refer to the **enclosed** article about the *Livingstone* case and its relevance in the "South Australian context" posted by Norman Waterhouse Lawyers, preeminent local government lawyers (see **Enclosure 2**).

13. To date, the Tree's roots have caused at least the following damage to our client's property:
  - 13.1. severe cracking to her concrete driveway;
  - 13.2. cracking of the arch of her carport;
  - 13.3. tilting and both horizontal and vertical movement to the front brick fence; and
  - 13.4. tilting of the concrete pad on which her letterbox sits.
14. The photos at **Enclosure 3** show some of the damage caused by the Tree.

#### **Expert opinions recently obtained**

In considering her position, our client has sought, and obtained, expert advice from Dr Dean Nicolle, a qualified and experienced arborist, botanist and ecologist and Mr Trevor John, a qualified and experienced structural engineer.

The advice provided by both Dr Nicolle and Mr John is comprised in their respective reports **enclosed** at **Enclosure 4** to this letter.

Notably, Dr Nicolle, in his report concludes as follows:

*"A root barrier installed in the location and specification as outlined in the undated two-page document of Ben Hall (City of Holdfast Bay) is unlikely to be effective in preventing ongoing damage to property at 10A Augusta Street.*

*In any event, the installation of a tree root barrier, as suggested by the Council, is highly likely to cause 'tree-damaging activity' as defined in the Planning Development and Infrastructure Act 2016, and result in the premature death of the tree."*

Further, we note the following remarks in Mr John's report:

*"6.1 The distress outlined below has been caused by the tree and is a result of the physical growth (expansion) of the tree roots under the concrete, thereby lifting the concrete.*

- *Tilting and both horizontal and vertical movement of the front brick fence.*
- *Cracking of the concrete footing supporting the brick fence.*
- *Tilting of the concrete pad at the front of the driveway.*
- *Significant cracking of the concrete driveway.*

*6.2 The distress outlined below has been contributed to by the tree and is a result of the physical growth (expansion) of the tree roots under the concrete footing and thereby lifting the concrete.*

- *Movement of the footing supporting the brick arch.*
- *Cracking of the brick arch from vertical and rotational movement.*

...

*6.3. If tree roots continue to grow within the property, further damage will occur.*

*The nature of that damage will be to increase the movement and exacerbate the cracking and distress to the front brick fence, the driveway, the concrete pad, and the garage arch."*

### **Our client's position**

1. As the Council will appreciate, our client is very concerned about the significant damage the Tree has already caused to her property and is expected to continue to cause if it remains.
2. While the Council appears to accept that the Tree has caused the significant damage to our client's property, it has, to date, declined to accept responsibility for this damage due to its interpretation of the qualified immunity in section 245 of the *Local Government Act*. Respectfully, we disagree with the Council's position and are of the view that, in the circumstances of this matter, the Council is liable for the damage caused to our client's property. Our client reserves all of her rights in this respect.
3. Putting aside the legal position for a moment, at a practical level, it is of course reasonable for our client, as a rate payer, to assume Council would wish to remedy this clearly unsatisfactory situation and prevent ongoing damage from the Tree especially in circumstances where:
  - 3.1. the Tree is clearly the cause of significant damage to our client's property;
  - 3.2. the Tree, should it remain, will continue to cause further damage to our client's property;
  - 3.3. the installation of a root barrier will **not** be effective at preventing further damage to our client's property; and

- 3.4. in any event, the installation of a root barrier is “highly likely” to cause “tree-damaging activity” **and** the premature death of the Tree.
4. In all the circumstances, and in order to prevent the need for litigation regarding this matter, our client urges Council to grant Owner Consent for the Tree’s removal and subsequent Development Approval.

### Requests

Having regard to the above, we are instructed to request the following:

1. that this letter, together with its enclosures, be brought to the attention of:
  - 1.1. the author of any report to be prepared for the elected members regarding this matter prior to the preparation of any such report; and
  - 1.2. all elected members prior to any decision(s) being made by the Council regarding this matter.
2. Given our client’s clear interest in the matter, we are instructed to request that either she personally, or a representative on her behalf, be given a right to make a deputation at the Council meeting at which the Council intends to determine whether it is prepared to grant Owner Consent for the removal of the Tree.
3. Lastly, while we understand that, subject to the Council granting Owner Consent, Council intends to lodge a development application seeking development approval for the Tree’s removal, we request that our client be named as a joint applicant with the Council in such application. The main reason for this is to ensure our client has a right of appeal in the event the application is refused. Our client’s expectation however would be that Council ‘takes the lead’ on any development application.

Please contact me if you have any queries or wish to discuss.

Yours faithfully



**Sydney McDonald**  
**BOTTEN LEVINSON**

Mob: 0411 554 253

Email: [sm@bllawyers.com.au](mailto:sm@bllawyers.com.au)

cc: Ms Lyn Fuller

Financial Accountant

City of Holdfast Bay

[LFuller@holdfast.sa.gov.au](mailto:LFuller@holdfast.sa.gov.au)

Mr Anthony Marroncelli

Manager Development Services

City of Holdfast Bay

[AMarroncelli@holdfast.sa.gov.au](mailto:AMarroncelli@holdfast.sa.gov.au)

**ENCLOSURE 1**



**ENCLOSURE 2**





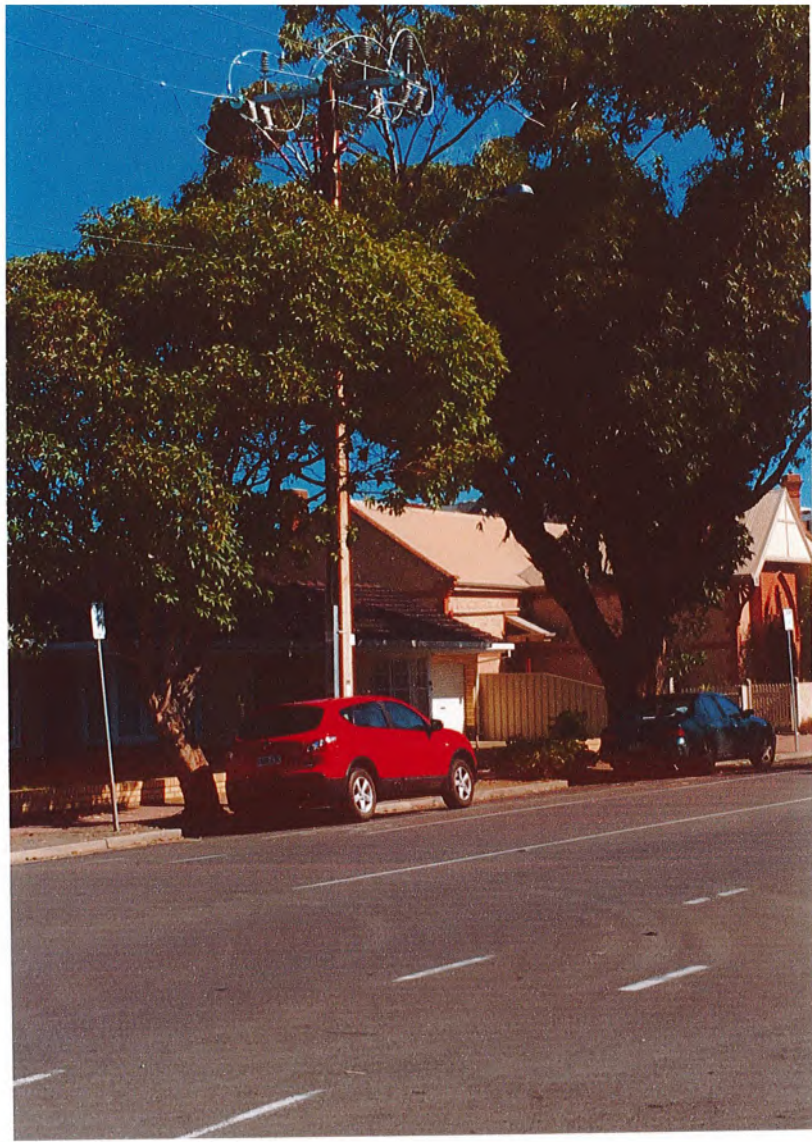




































**ENCLOSURE 3**

## News

### Victorian Court finds Council liable for damage caused to dwelling by street tree – Livingstone v City of Melbourne [2020] VCC 1775

On 11 November 2020, His Honour Judge Lauritsen of the County Court of Victoria (**Court**) found the City of Melbourne (**Council**) had caused a nuisance to the Plaintiff by planting a white cedar street tree in front of her dwelling. The street tree had caused severe property damage, resulting in the need for demolition and rebuild of the dwelling. The Court awarded the Plaintiff \$453,530.83 in damages. A South Australian court could make a similar finding against a Council if the same factual scenario was to be considered.

#### Background

The Plaintiff had owned the 130 year old dwelling since 1997 and had undertaken some dwelling alterations during ownership. Minor cracking appeared in the dwelling during 2006. In 2009 the Council planted a white cedar street tree on the front footpath, approximately three metres from the front of the dwelling. During 2011-2012 the cracking in the dwelling increased and the footpath began to heave around the street tree. The Plaintiff notified the Council of the damage in 2014 and the Council replaced the heaving footpath.

By 2015 the damage was so severe that the Plaintiff could not properly open or close the front door to the dwelling; the cracks were widening; and dwelling

foundations were subsiding. In response to the Plaintiff's notification of this damage, the Council installed a root barrier between the street tree and the dwelling.

The Plaintiff had the dwelling underpinned in 2015 and 2019 and eventually resorted to placing some of the contents of the dwelling into storage after fearing that the roof would collapse. The Plaintiff continued to notify the Council of damage and requested removal of the street tree, before resorting to the commencement of legal proceedings in 2018.

### **Hearing**

During the hearing the Plaintiff pursued an action in nuisance and damages in the amount of \$453,530.83 (which included the proposed demolition of the dwelling and its rebuild). The central issues were whether the street tree caused or materially caused the damage to the dwelling and, if so, whether this amounted to a substantial and unreasonable interference with the Plaintiff's use and enjoyment of her dwelling. The Council denied the street tree had caused the damage to the dwelling and argued the dwelling had not been properly maintained, thus resulting in the heaving and damage to foundations.

Three expert engineers gave evidence on the moisture content of the highly reactive clay soil around the vicinity of the dwelling. The experts also considered other factors such as the: old inflexible original dwelling foundations; inflexible nature of the solid brick construction; inadequate stormwater drainage from the downpipes of the dwelling; extent of the root barrier installed by the Council; effect of climatic conditions; and impact from other vegetation situated on neighbouring land.

The Court found that the sole cause of damage to the dwelling was the street tree and that the root barrier installed by the Council had not been effective in preventing the street tree from causing damage to the dwelling. Other factors such as the neighbouring vegetation, the treatment of stormwater from downpipes, and a nearby Telstra pit (that collected water) were found to have contributed only marginally to the damage.

The Court found that the dwelling was in good condition prior to the planting of the street tree. The Plaintiff had sought to mitigate her loss as she had approached the Council on many occasions complaining about the street tree and the alleged damage it was causing to her dwelling. She had not failed to mitigate her loss by not connecting the downpipes to a legal point of discharge, as this did not materially contribute to the damage. She had acted reasonably

and was not negligent in arranging the underpinning of the dwelling, regardless of whether this had actually been an effective measure.

The Court assumed the Council's officers or employees knew of the existence of the clay in the area and its highly reactive nature; the moisture-seeking propensities of trees through their roots; and the characteristics of the white cedar and its potential for growth. The Court found that the Council ought to have known that damage would result from planting the street tree close to the dwelling where the soils were highly reactive clay. That damage was reasonably foreseeable and the Council was liable in damages. Ultimately, the Council planted the street tree. The street tree caused or materially contributed to the damage of the dwelling. Therefore, the Council was found guilty of the tort of nuisance as it had substantially interfered with the Plaintiff's enjoyment of the dwelling and she suffered damage as a result.

It has been reported that the Council is considering whether to appeal the decision.

### **South Australian context**

It is possible that if a similar case to *Livingstone* was heard by South Australian courts then the relevant Council may also be found to be liable in nuisance and or negligence.

Relevantly, section 245 of the *Local Government Act 1999* (SA) provides a qualified immunity for Councils in respect of damage resulting from street trees. It provides that a Council is not liable for any damage to property which results from the planting of a tree in a road or the existence of a tree growing in a road (whether planted by the Council or not). However, if the owner or occupier of property adjacent to the road has made a written request to the Council to take reasonable action to avert a risk of damage to property of the owner or occupier from the tree, and the Council has failed to take reasonable action in response to that request, the Council may be liable for any damage to property that would have been averted if the Council had taken reasonable action in response to the request.

What will amount to "reasonable action" will depend upon the circumstances of each case. We recommend that a Council should obtain independent advice to assist it in determining what action it will take, and more particularly what action might be 'reasonable' in the particular circumstances. Other relevant factors for consideration may also include the probability and seriousness of damage to the property when weighed against the cost of avoiding the damage. Naturally, any

individual claim for damages in relation to a Council street tree should be referred to the Mutual Liability Scheme for its consideration and action.

If you would like any assistance with matters concerning street trees, please contact Rebecca McAulay on +61 8 8210 1278 or [rmcaulay@normans.com.au](mailto:rmcaulay@normans.com.au), or Dale Mazzachi on +61 8 8210 1221 or [dmazzachi@normans.com.au](mailto:dmazzachi@normans.com.au).

Posted 1 December 2020

Audience Government

#### Authors

Rebecca McAulay  
Principal



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Dale Mazzachi  
Principal

**ENCLOSURE 4**

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Arboriculture - Botany - Ecology - Eucalypt Research

## **Tree Report – 10A Augusta Street, Glenelg, SA**

### **Arboricultural advice regarding a significant *Eucalyptus botryoides* (bangalay) tree**



Arboricultural advice and report prepared for Christine Grant of 10A Augusta Street in Glenelg, South Australia.

Arboricultural report prepared by Dean Nicolle following a site inspection and tree assessment on the 23<sup>rd</sup> of September 2021.

**Report dated the 1<sup>st</sup> of October 2021.**



## **BACKGROUND**

On the 21<sup>st</sup> of September 2021, I was engaged by *Botten Levinson*, on behalf of Christine Grant of 10A Augusta Street in Glenelg, South Australia, to assess and provide arboricultural advice regarding a significant (as defined by the *Planning, Development and Infrastructure Act 2016*) *Eucalyptus botryoides* (bangalay) tree that is located on the council verge in front of 10A Augusta Street (see Figure 1).

I was provided with the following documents for my review prior to inspecting the site and tree:

1. The 'Arborist Report' of Mark Eitzen of *Acer Horticultural Services*, dated 5<sup>th</sup> of October 2018;
2. The 'Street Tree Assessment' of Sam Cassar of *Symatree*, dated June 2019;
3. The undated two-page document of Ben Hall, Technical Officer Arboriculture at the *City of Holdfast Bay*, with the specifications for a proposed root barrier (included in this report as Appendix A).

I have subsequently been requested to provide a written report setting out my views on questions relating to a potential root barrier between the residential dwelling at 10A Augusta Street and the subject tree. My response to these questions is provided here.



*Figure 1. The subject tree, looking approximately east along Augusta Street on the 23<sup>rd</sup> of September 2021. The superimposed yellow arrows indicate where overhead electrical infrastructure was undergrounded in 2016/17 (see also Figures 3 and 4).*

## QUESTIONS

### *Question 1.*

***Do you believe the installation of the Council's proposed root barrier will be effective in preventing ongoing damage to our client's property? If not, why not?***

A root barrier installed in the location and specification as outlined in the undated two-page document of Ben Hall of the *City of Holdfast Bay* (see Appendix A) is unlikely to be effective in preventing ongoing damage to property at 10A Augusta Street.

The specified root barrier is proposed to be located against the northern concrete surround of the dwelling at 10A Augusta Street (see Figure 2 and Appendix A) and be 600 mm deep (Appendix A). While the excavation required to install such a root barrier is likely to sever numerous roots from the tree (see Question 2), if soil moisture is present beneath the dwelling or driveway (or on the other side of the dwelling and driveway to the tree), the roots will simply grow beneath the root barrier to access soil moisture. The presence of live roots beneath the dwelling and driveway implies that soil moisture is present and being replenished in the soil beneath these structures, otherwise the roots would not have grown (and would not have continued to grow) in that area in the first place. A root barrier of much greater depth would be required to significantly reduce the regrowth of roots beneath the dwelling and driveway.

Sam Cassar, in his June 2019 report, suggests on p. 13 (first paragraph) that '*It is typical that once trees have reached maturity, (as is the case with the subject tree) equilibrium between root activity and surrounding infrastructure is achieved, with no future damage to surrounding infrastructure expected*'. This statement is misleading, as it suggests that roots do not continue to 'grow' in a mature tree, which is not the case. While the *length* of roots may have reached their maximum extent, the *diameter* of the roots will continue to increase throughout the life of the tree via secondary growth<sup>1</sup>. It is secondary growth that causes the displacement of soil around the roots, causing soil displacement (soil 'heave') and associated displacement to infrastructure. Similarly, while the *maximum extent* of roots will be achieved in a mature tree (i.e. distance from the trunk of the tree), new roots are continually being grown within that maximum extent area, mainly as existing roots die or are damaged (for any reason) over time.

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<sup>1</sup> *In botany, secondary growth is the growth that results from cell division in the cambia or lateral meristems and that causes the stems and roots to thicken, while primary growth is growth that occurs as a result of cell division at the tips of stems and roots, causing them to elongate.*



*Figure 2. The subject site and tree, looking approximately east along the front yard of 10A Augusta Street on the 23<sup>rd</sup> of September 2021. The superimposed yellow line indicates the proposed alignment of the root barrier as outlined by Ben Hall of the City of Holdfast Bay). Note the presence of numerous surface roots in the front lawn yard of 10A Augusta Street.*

**Question 2.**

**Do you believe it is probable that the installation of a tree root barrier, as suggested by the Council, will cause ‘tree-damaging activity’ as defined in the Planning Development and Infrastructure Act 2016?**

The installation of a tree root barrier, as suggested by the Council, is highly likely to cause ‘tree-damaging activity’ as defined in the *Planning Development and Infrastructure Act 2016*.

**If so:**

**a. why?**

The subject tree is of the species *Eucalyptus botryoides* (bangalay, southern mahogany). This species is not indigenous to the site, but originates from a high-rainfall coastal habitat in south-eastern Australia. In my treatment of the species in *Taller Eucalypts for Planting in Australia* (Nicolle 2016), I state ‘*The species is not drought tolerant, and on lower rainfall sites (e.g. on the Adelaide plains), trees grow rapidly initially (for the first 20–40 years), following which they can deteriorate in health due to annual summer drought stress, and associated problems such as borers.*’ Due to the poor to marginal suitability of the species to the local climatic conditions, it is much more susceptible to any root damage sustained to the tree. This will be further exacerbated by reduced rainfall and increased temperatures associated with climate change.

Assuming that significant roots are located beneath the dwelling and driveway (which is almost certainly the case considering the damage observed and the surface roots visible in the front yard of 10A Augusta Street), the installation of the root barrier is likely to sever numerous roots from the tree. The severance of roots reduces the ability of the tree to access and uptake soil water, which is already a critically limiting resource for this individual tree.

The report of Sam Cassar (June 2019) suggests on p. 13 that ‘*tree sensitive techniques (i.e. hydro vac) [be] used to excavate the required trench*’. However, a root barrier *cannot* be installed using tree-sensitive techniques (e.g. using a soil vacuum), because by definition a root barrier must sever and then exclude any roots from passing from one side of the barrier to the other. The retention of certain roots through a root barrier defeats its very purpose.

In the case that roots have already been severed on the northern side of the tree (due to the undergrounding of overhead electrical infrastructure, see Figures 3 and 4), or that few or no roots occurred on the northern side of the tree when these works were undertaken, then the likelihood of the proposed root barrier causing tree-damaging activity is significantly increased, as will be the severity of tree-damaging activity caused by the root barrier (see Question 2b below).

*and*

***b. what likely impact/s to the tree's health and structural integrity would you expect?***

The degree of impact that the specified root barrier will have on the tree will partly depend on the extent of root damage sustained to the tree during the undergrounding of overhead electrical infrastructure in 2016 (noting that regardless of the extent of root damage sustained during these undergrounding works, the specified root barrier is likely to impact on the tree and reduce its further life expectancy). Historical Google Streetview imagery reveals that overhead electrical distribution cables ran on the southern side of, and parallel to, Augusta street, and through the canopy of the tree, until 2016, following which works were undertaken to underground this infrastructure. It appears that the infrastructure was buried in a one metre-wide trench against the southern kerb of Augusta Street, passing to within one metre of the base of the tree (see Figures 3 and 4). Assuming that this trench was conventionally (mechanically) excavated, almost all roots on the northern side of the tree would have been severed, noting that the roots of the tree would likely to have been biased to the south (into open ground) prior to these undergrounding works in any case.

If the undergrounding of electrical infrastructure caused some root damage to the tree, the impact that the specified root barrier will have on the tree may be very rapid, with a deterioration in the health of the tree and its eventual death potentially occurring within a year or two of the works to install the proposed root barrier. In such a case, the cause of tree death could not be attributed to the root barrier alone (even though without the root barrier the tree may have lived longer), but to the cumulative impact of root damage sustained by both the undergrounding of electrical infrastructure and the root barrier.

If the undergrounding of electrical infrastructure was somehow undertaken without causing any root damage on the north side of the tree, the impact that the specified root barrier will have on the tree may be less severe and less rapid (assuming an even root distribution in the tree), but it is nevertheless still likely to significantly impact on the health of the tree and reduce its life expectancy (i.e. cause its premature death).

If few or no roots were damaged by the undergrounding of electrical infrastructure because few or no roots were present immediately to the north of the tree where the trenching occurred, this signifies that most or all roots occurred only on the south side of the tree, towards and within the property of 10A Augusta Street. Such a completely biased root distribution would mean that any root damage sustained on the south side of the tree (i.e. within the property of 10A Augusta Street) is likely to significantly impact on the health and longevity of the tree.

It is difficult to estimate how much longer the tree will live both in its current environment (i.e. without a root barrier), and if the specified root barrier is installed, because future rainfall and climatic conditions will be significant in

determining the further lifespan of the tree, especially considering the species and its marginal (at best) suitability to the local climatic conditions. However, I can say with some certainty that the installation of the specified root barrier will reduce the life span of the tree compared to what it would be in the absence of the root barrier.



*Figure 3. Screenshot of Google Streetview of the subject site and tree, looking approximately south-west from Augusta Street and dated June 2016. Note the overhead electrical distribution cables running through the tree on the south side of Augusta Street, which are no longer present (compare to Figure 4). This image was taken when this overhead electrical infrastructure was being undergrounded on the south edge of Augusta Street (compare with Figure 4). Note the recently back-filled trench along the southern kerb and about 1 metre wide (middle of trench approximately indicated by the superimposed yellow line), and passing very close to the subject tree. These works are likely to have severed any roots on the north side of the tree, thus exacerbating any root damage that would be sustained by a proposed root barrier on the south side of the tree.*



*Figure 4. Screenshot of Google Streetview of the subject site and tree, looking approximately south-west from Augusta Street and dated May 2017. Note that the overhead electrical distribution cables that previously ran through the tree on the south side of Augusta Street are no longer present (compare to Figure 3). This image was taken following the overhead electrical infrastructure being undergrounded on the south edge of Augusta Street. Note the recently re-sealed trench along the southern kerb and about 1 metre wide (middle of trench approximately indicated by the superimposed yellow line), and passing very close to the subject tree. These works are likely to have severed any roots on the north side of the tree, thus exacerbating any root damage that would be sustained by a proposed root barrier on the south side of the tree.*



## SUMMARY

A root barrier installed in the location and specification as outlined in the undated two-page document of Ben Hall (*City of Holdfast Bay*) is unlikely to be effective in preventing ongoing damage to property at 10A Augusta Street.

In any event, the installation of a tree root barrier, as suggested by the Council, is highly likely to cause 'tree-damaging activity' as defined in the *Planning Development and Infrastructure Act 2016*, and result in the premature death of the tree.

## REFERENCES

Nicolle D (2016) *Taller Eucalypts for Planting in Australia*. D.Nicolle, Adelaide.

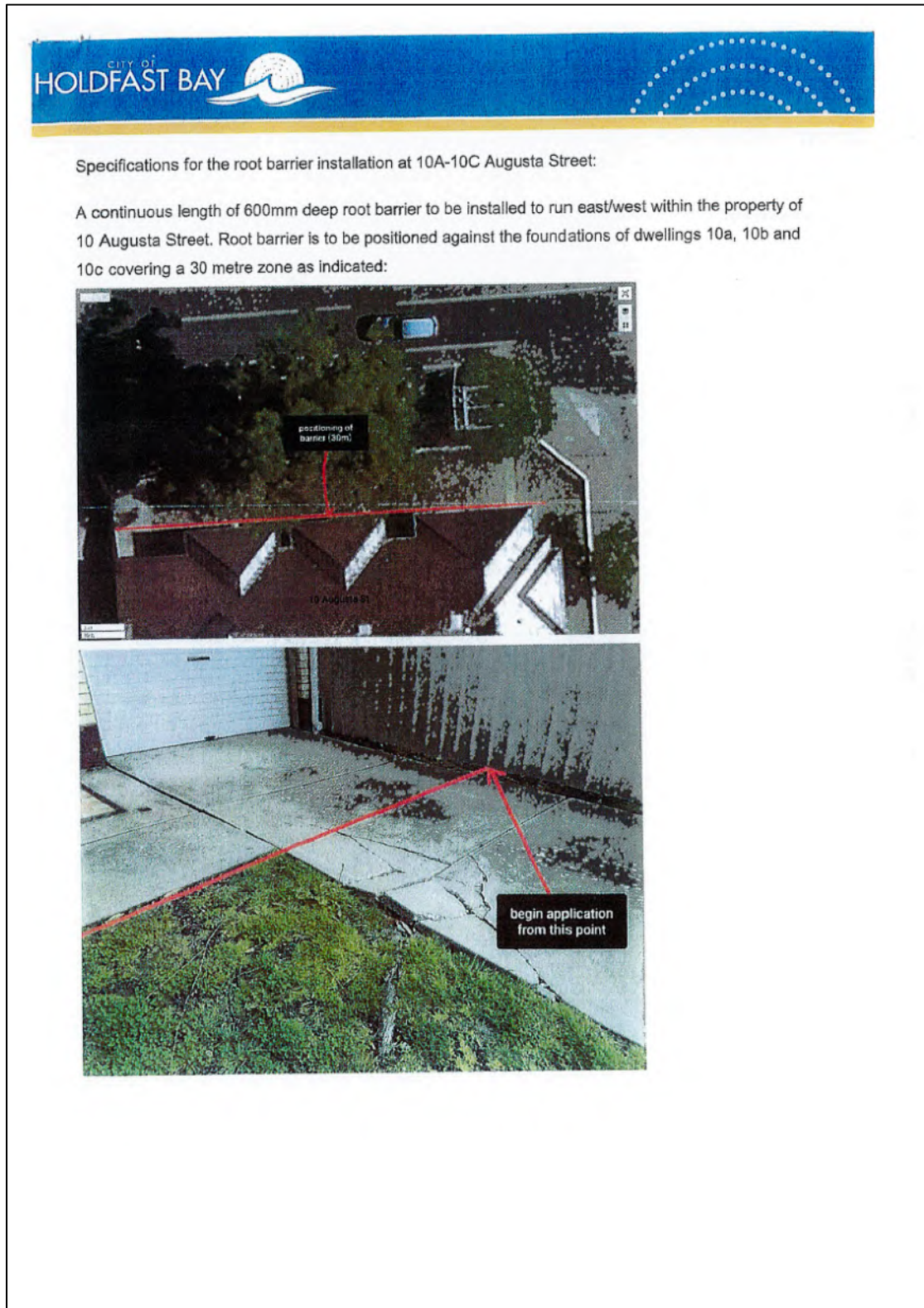
I thank you for the opportunity to provide this arboricultural advice and report.  
If you require further information or clarification please contact me for assistance.



Dean Nicolle  
OAM, BAppSc Natural Resource Management, BSc Botany (Hons), Ph.D

## APPENDIX A

The undated two-page document of Ben Hall, Technical Officer Arboriculture at the *City of Holdfast Bay*, with the specifications for a proposed root barrier.

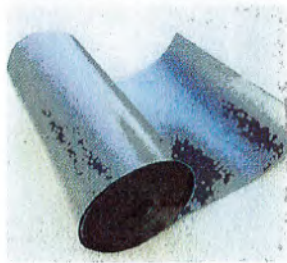




Any services encountered throughout root barrier installation will require the approach of delineation where possible and puzzle cutting to otherwise accommodate best possible fit and seal from tree root activity to dwellings.

Tree roots detected throughout excavation are to be neatly pruned with sharp handsaw. Should any roots greater than 30mm in diameter be detected throughout excavation of trench, Council's Arborist is to be contacted.

Note: Approximately 3.5m worth of concrete (two footpaths and one driveway) will require cutting and reinstatement to allow for a continuous trench/application of root barrier.



**ROOT BARRIER 600MM X 30M  
ROLL**

**BEN HALL**

Technical Officer Arboriculture, Mobile 0400 935 557, Email [bhall@holdfast.sa.gov.au](mailto:bhall@holdfast.sa.gov.au)

Our Ref: 69826-1

Your Ref: BLL 220024

1 October 2021

Mr Syd McDonald  
Botten Levinson Lawyers  
Level 1, 28 Franklin Street,  
Adelaide SA 5000

Dear Sir

**RE: 10A AUGUSTA STREET, GLENELG, SOUTH AUSTRALIA**

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## 1. INTRODUCTION

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I note that you act for Ms Christine Grant, the owner and occupier of the property at 10A Augusta Street, Glenelg, and I refer to your request for me to undertake an inspection of the above site and prepare a report.

## 2. BRIEF

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My brief is to provide a response to the following questions.

1. *What, if any, damage to our client's property have the roots of the street tree caused? What are the reasons for these views?*
2. *Whether, if tree roots continue to grow within our client's property, further damage will occur, and the nature of that damage.*

## 3. SITE INSPECTION

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I undertook an inspection of the property on 27 September 2021.

The following image of the site is courtesy of NearMaps.



#### 4. OBSERVATIONS

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- 4.1. A large eucalyptus tree (the *street tree*) was growing in the verge in the road reserve between the footpath and the road.
- 4.2. The property included a brick residential Unit with a garage with an arch doorway and a concrete driveway.  
  
Ms Grant had constructed timber framing to support the arch as it was cracked, and she was concerned with the brickwork collapsing.
- 4.3. A brick fence with a concrete footing, had been constructed along the front boundary.
- 4.4. Large roots were clearly visible on the surface of the front garden and in cracked sections of the driveway.
- 4.5. The following photographs represent my observations.



P01 Street tree in road reserve



P02 Brick fence - horizontal distortion & tilting



P03 Brick fence and footpath



P04 Brick fence - vertical distortion



P05 Brick fence - vertical distortion and cracked footing



P06 Tree roots in front garden



P07 Tree roots in front garden & driveway





P08 Tree roots in front garden & damaged driveway



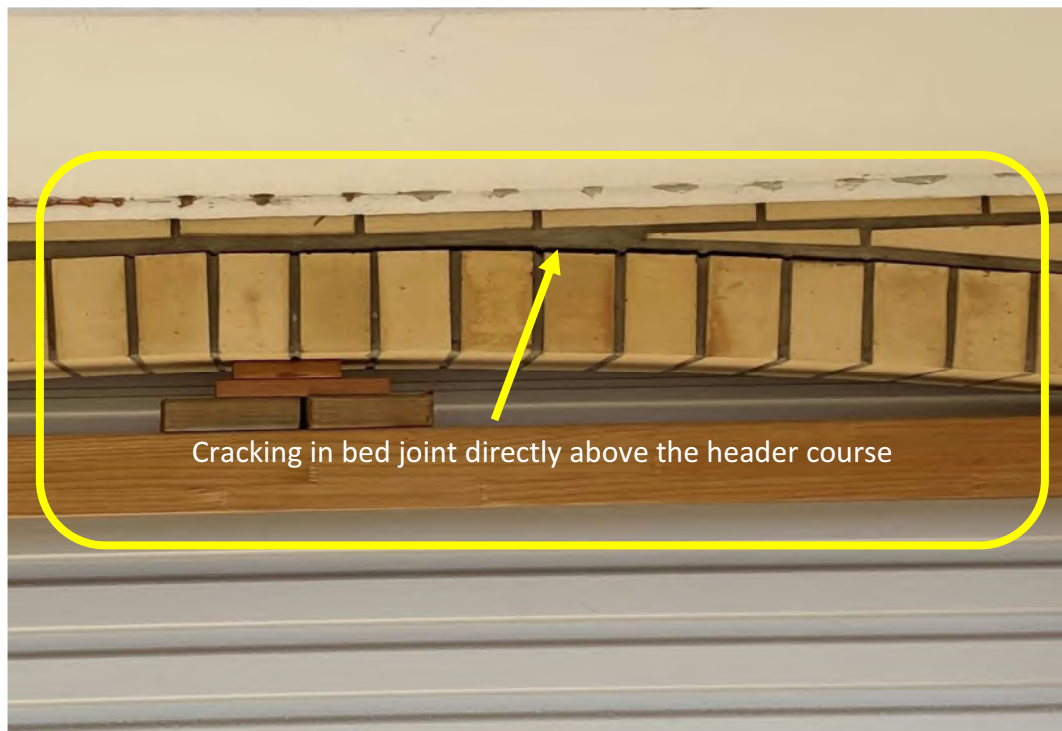
P09 Damaged driveway – tree roots visible



P10 Tilting of concrete pad



P11 Garage arch – showing timber framing to sides and top



P12 Cracking to garage arch.

## 5. DISTRESS IDENTIFIED

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- 5.1. The front brick fence had undergone tilting and both horizontal and vertical movement.
- 5.2. The driveway was significantly cracked.
- 5.3. The concrete pad had tilted.
- 5.4. The header course of the brick arch over the garage had dropped by approximately 6mm.

## 6. MY RESPONSE AND OPINIONS

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- 6.1. The distress outlined below has been caused by the tree and is a result of the physical growth (expansion) of the tree roots under the concrete, thereby lifting the concrete.
  - Tilting and both horizontal and vertical movement of the front brick fence.
  - Cracking of the concrete footing supporting the brick fence.
  - Tilting of the concrete pad at the front of the driveway.
  - Significant cracking of the concrete driveway.

6.2. The distress outlined below has been contributed to by the tree and is a result of the physical growth (expansion) of the tree roots under the concrete footing and thereby lifting the concrete.

- Movement of the footing supporting the brick arch.
- Cracking of the brick arch from vertical and rotational movement.

I differentiate between cause and contributed-to as there may be another contribution to the brick arch movement from settlement of the brick pier on the right hand side of the garage.

6.3. If tree roots continue to grow within the property, further damage will occur.

The nature of that damage will be to increase the movement and exacerbate the cracking and distress to the front brick fence, the driveway, the concrete pad, and the garage arch.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Trevor John', with a horizontal line underneath the name.

**Trevor John** CPEng FIEAust  
Chartered Professional Engineer

# Attachment 2



Classification:	Statutory Policy.
Trim Container	B2037
Trim Document Number:	DOC/14/30916
First Issued / Approved:	July 2010
Last Reviewed:	January 2015
	C200115/040
Next Review:	January 2020
Responsible Officer:	General Manager – City Assets
Date Placed on Web:	<b>February 2015</b>

**1. PREAMBLE**

The Tree Management Policy provides a framework for street and open space tree management for planting and maintenance within the City of Holdfast Bay.

**1.1 Background**

Trees make an important contribution to the aesthetic of the City of Holdfast Bay and provide practical amenity and add character, whilst providing a range of environmental, social and economic benefits. Planting of trees is also a central component of achieving Council’s Strategic Objective of Greening our City.

The City of Holdfast Bay recognises that the local community will have different views and sensibilities regarding trees. This policy aims to provide a consistent approach to the management of the existing and future urban forest.

**1.2 Purpose**

- a. The Tree Management Policy aims to manage and protect Council’s trees, both in relation to its vision for streetscapes and open spaces, and protection of trees significant or otherwise.
- b. The Policy ensures consistency in future street tree planting and management, and managing the impacts on trees.

**1.3 Scope**

- a. The Policy applies to Elected Members, employees, residents, contractors and volunteers of the City of Holdfast Bay.
- b. This policy provides advice and guidance on the City’s Urban Forest. A separate policy for Street Verges is outlined in the City of Holdfast Bay Street Verges Policy.

**1.4 Definitions**

For the purpose of this Policy the following definitions apply:

- a. Regulated Tree – tree size and characteristics as specified in the *Development Act 1993* and Regulation 6A of the *Development Regulations 2008*.
- b. Significant Tree – tree size and characteristics as specified in the *Development Act 1993* and Regulation 6A of the *Development Regulations 2008*.

### 1.5 *Strategic Reference*

- a. Our Place Plan 2012-2015
  - i) A Place that Values its Natural Environment - “Promote and Implement programs that enhance the greening of the City”
  - ii) A Place with a Quality Lifestyle - “Provide high quality attractive and well serviced open spaces, reserves and streetscapes”

## 2. POLICY STATEMENT

### 2.1. *Street Trees*

- a. Street tree species have been nominated for each street in Council’s Street Tree Strategy Planting Guide. This document is available via Council’s website.
- b. Street tree species have been selected to meet specific criteria and tolerances, and will be able to perform in our particular environment. Council have considered the following criteria when selecting tree species:
  - i) Compatibility with the local environment,
  - ii) Ability to provide habitat for native bird life/shade/maintenance requirements,
  - iii) Availability of commercial quantity and quality of stock, and
  - iv) Allergies, berry/nut drop, and infrastructure impacts and the like.
- c. Tree species have been selected for the location and will not be altered due to:
  - i) Potential scenic view obstruction
  - ii) Tree species is disliked
  - iii) Potential nuisance by way of berry/ nut drop
  - iv) Shading of private property.
- d. Species selected within the Council’s Street Tree Strategy Planting Guide provide a combination of exotics and natives, deciduous and evergreen, and heights.
- e. Additions to the Street Tree Strategy Planting Guide will be considered as necessary, to ensure biodiversity and adaptive management to changing environmental conditions.
- f. Alternative species may be selected to what is listed for the location within the Street Tree Planting Guide to accommodate narrow verges, provide a more suitable species where dwellings are in close proximity to the proposed tree site and for plantings that are in coastal locations.
- g. Recognising the benefits of trees, Council will continue to identify new opportunities for tree planting.
- h. Street trees will be block planted as part of the Whole Street Planting Program and will be the majority of plantings that the council will undertake. This practice will benefit the Urban Forest within the City of Holdfast Bay with the aim to achieve whole avenues of street trees that will in time grow in unison with one another, whilst having a major contribution to the amenity value of the area.
- i. Council will ensure that a number of streets are allocated in the Whole Street Planting Program each planting season. Streets selected will be balanced out

## Tree Management Policy

throughout the City of Holdfast Bay with one to three Streets allocated from each ward per year. The selected streets will be based on current tree stock existing within a street.

- j. Trees will be planted within the guidelines within Appendix 1.
- k. Property owners can apply to plant their own street tree by submitting the "Property Owner Street Tree Planting Form". The tree must be the nominated tree species for the location and is planted as per the guidelines in Appendix 1 of this policy. Planting cannot commence until written notification from Council has been received. Street trees planted by residents become the property of the City of Holdfast Bay. Only property owners can submit a "Property Owner Street Tree Planting Form".
- l. Where possible, each property will have at least one street tree on each frontage, and more where there is adequate space. Exemptions will be at the discretion of the General Manager City Assets or his nominated representative, and will be required in writing, based on criteria such as future development, heritage housing, and narrowness of space available and so on.
- m. Council will heed relevant information from utilities, SA Power Networks and SA Water, in the selection and the planting location of tree species.
- n. No site shall be re-planted due to death or vandalism and no individual plantings can be put through as singular request. However, at the discretion of the General Manager or his nominated representative, singular plantings may occur in areas of high tourism exposure.
- o. Street tree planting will not occur in zones where there is a record of soil contamination or if soil contamination is evident upon digging.
- p. All residential street tree planting will be programmed and undertaken during the cooler months of the year, between May and September each year.
- q. Residents will be advised of the tree species before planting.
- r. Fact sheets on the street tree species are available via the website or available from Customer Service.
- s. Street trees planted by council in locations with high probability of, or consistent vandalism, or in high traffic areas, will be protected by tree guards (civic guards).
- t. Coastal plantings will have coastal surrounds installed at time of planting. Coastal plantings will be only undertaken during August and September to give the best chance of survival.
- u. Council is not liable for any damage to property resulting from a tree planted in the road reserve (under section 245 of the *Local Government Act 1999*) unless a written request to Council regarding the risks has been received from an adjacent owner/occupier of property. When notified in writing of any issue by an adjacent owner/occupier of property, Council will determine an appropriate response to that notification to address its exposure to any ongoing liability.
- v. To assist residents in the management of established street trees causing issues to private infrastructure, including fence, yard and driveway, Council will offer up to 10m of root barrier at Council expense, for installation at resident expense, based on an engineering report of damage provided to the General Manager, City Assets or his nominated representative.



### 2.2. *Open Spaces*

- a. Open space refers to land that is publically accessible and provided for community benefit (e.g. recreation park, linear trail, sportsground and natural areas). Trees planted within those areas are in accordance with the City of Holdfast Bay Open Space and Public Realm Strategy and will be a selection of Australian natives. However, the City of Holdfast Bay defined Natural Areas will only be rejuvenated with tree species native to the council area and these trees will be planted in areas to benefit the existing flora and fauna and not to suit the recreational needs of users.
- b. Open space tree planting is generally undertaken during the cooler months of the year, between May and September each year.

### 2.3. *Tree Pruning*

- a. Council is responsible for all formative pruning, maintenance pruning and management of the street trees it plants and those that have been planted by residents on Council verges.
- b. Council maintenance of street trees is determined through best practice standards and its street tree procedures. Residents are not authorised to prune street trees on Council property. Where Council street trees are overhanging into private property, residents should contact Council for pruning to ensure the ongoing health of the tree and that the tree is not destabilised.
- c. Council is responsible for all maintenance and management of open space trees within the Council area.
- d. Pruning of Council trees will be carried out in accordance with Australian Standard 4373, 'Pruning of Amenity Trees'. The objective of the Australian Standard is to provide a guide defining uniform tree pruning procedures and practices in order to minimise the adverse or negative impact of pruning on trees.
- e. The age, condition, shape and form for the tree will be taken into account when pruning.
- f. No street tree will be fence-lined as this will result in an unbalanced tree. This will also bring on many other negative effects in terms of the tree's health and structure.
- g. Council will reduce canopies over dwellings as much as possible within reason. Consideration of the tree's significance and heritage listing may alter the approach with the amount of pruning that can occur.
- h. New developments that are constructed under existing canopies will not be pruned to the detriment of the tree.
- i. Council owned trees that intrude into and over infrastructures within the road reserve will be pruned to the following minimum clearance:
  - i) Footpath
    - Edge of footpath – 2.4m (height)
    - Centre of footpath – 2.7m (variations depending on pedestrian traffic loads, sight line issues and extent of private residential overhang)
  - ii) Road side (variance is dependent on traffic and/or sight line issues)
    - Edge of carriage way (non-arterial) – 2.5m to 3m
    - Edge of carriage way (arterial) – 5m
    - Centre of road (non-arterial) – 5m

### 2.4. *Tree Watering*

- a. Council will ensure summer watering for the first four years of the street trees it has planted, or as required; and residents are also encouraged to water street trees. Council will consider water sensitive urban design installations in the planting of street trees, to maximise the opportunity for tree health and to minimise impacts on infrastructure.
- b. Street trees planted by residents will not be watered by Council.
- c. Trees in open spaces are watered in summer by the reserve irrigation (if installed) or via manual processes. Trees will be monitored appropriately to ensure they are receiving enough water during the first four years, or as required.

### 2.5. *Removal of Trees - General*

- a. All requests for removal must be in writing and will be assessed by, or by a person nominated by, the General Manager, City Assets. Retention of the tree is the first priority when undertaking the assessment.
- b. Trees that are healthy and structurally sound will not be removed for the following reasons:
  - i) The tree obscures or potentially obscures views (other than traffic and pedestrian sight lines)
  - ii) The tree variety is disliked
  - iii) The tree variety causes nuisance by way of leaf, fruit or bark shedding or the like
  - iv) The tree provides habitat to wildlife that causes nuisance by way of droppings, tree litter and the like
  - v) The tree is in the way of a non-essential crossover or verge paving option
  - vi) The tree shades private gardens, solar hot water installations and the like.
- c. Removal will not be considered for any tree on the grounds that it is lifting up infrastructure around it. Council continually aim to pro-actively eliminate trip hazards acting upon the worst situations throughout the City of Holdfast Bay as a priority.
- d. The General Manager, City Assets or his nominated representative has delegated authority to effect the removal of street trees which are:
  - i) dead, dying, diseased, and/or structurally unsound,
  - ii) a non-complying species, or
  - iii) designated as weed/nuisance species by the South Australian Government, even if healthy and structurally soundRemoval in these circumstances will be at Council expense.
- e. The General Manager, City Assets or his nominated representative has delegated authority to effect the removal of street trees which are required for access for essential and emergency services. Removal and offset replacement in these circumstances will be at the applicant's expense, as outlined below.
- f. Residents are not authorised to remove trees from Council property. Council will use relevant provisions of the *Local Government Act 1999*, specifically section 221, to protect the value of its urban forest where trees have been vandalised or removed without Council authority.
- g. All relevant legislation from the impacts of development on trees will be used by Council to protect its street tree population.

## Tree Management Policy

### 2.6. **Removal of trees which are not Regulated or Significant trees for development**

- a. All requests for the removal of a complying species street tree which is considered structurally sound and healthy will be referred to Council for a decision.
  - i) If removal of a healthy and structurally sound street tree is agreed by Council, the applicant shall be invoiced for the following costs:
    - removal of the tree and two replacement street trees as nominated in Council's Street Tree Strategy Planting Guide, based on Council's approved Schedule of Fees and Charges for the applicable year, and;
    - the lost amenity value of the tree based on the Revised Burnley Method of Tree Valuation.
  - ii) Replacement trees will be sourced and planted by field staff. Replacement trees will be planted in a future planting season.
- b. Trees can only be removed for development if the tree has a low useful life expectancy and/or has low amenity value. This will be determined by the General Manager, City Assets or his nominated representative.
- c. All other possible designs are to be considered before tree removal is an option.

### 2.7. **Removal of trees which are Regulated or Significant trees**

- a. All requests for removal or non-maintenance pruning of a healthy and structurally sound Regulated or Significant tree, where the removal or pruning amounts to "tree-damaging activity" in accordance with the *Development Act 1993* and *Development Regulations 2008* must be accompanied by a report from a qualified professional (i.e. an Arborist).
- b. All requests for the removal of a complying street tree species which is considered structurally sound and healthy will be referred to Council for a decision.
- c. If Council agrees that the removal of such a tree is warranted, a Development Application will be submitted and assessed under the *Development Act 1993* with its associated processes for public consultation, appeal and decision notification.

### 2.8. **Replacement of Regulated and Significant Trees**

- a. If a Regulated tree is removed by Council because it is no longer structurally sound, Council will, in accordance with the *Development Act 1993*, plant two trees with the potential to become significant at a nearby reserve, or replace the street tree and plant one tree with the potential to become significant at a nearby reserve.
- b. If a Significant street tree is removed by Council because it is no longer structurally sound, Council will, in accordance with the *Development Act 1993*, plant three trees with the potential to become significant at a nearby reserve, or replace the tree and plant two trees with the potential to become significant at a nearby reserve.

## Tree Management Policy

### **2.9. Construction Works - General**

- a. Council contractors undertaking construction works that may affect Council trees are required to follow the guidelines for work contained in Appendix 2 of this policy.

### **2.10. Kerb and Watertable Infrastructure (KWT)**

- a. Where trees may be impacting on footpaths or kerb & watertable (KWT) infrastructure, different treatment options will be considered to minimise the damage impact to street trees, including the use of rubber or cement treated rubble.

### **2.11 Construction Works - Crossovers**

- a. In the event of a street tree being required to be removed (subject to any approvals required under the *Development Act 1993*) to facilitate entry to a new or redeveloped property, the applicant shall be invoiced for the following costs:
  - i) removal of the tree and two replacement street trees as nominated in Council's Street Tree Strategy Planting Guide, based on Council's approved Schedule of Fees and Charges for the applicable year, and
  - ii) the lost amenity value of the tree based on the Revised Burnley Method of Tree Valuation
- b. Replacement trees will be sourced and planted by depot staff. Replacement trees will be planted in a future planting season.

### 3. REFERENCES

#### 3.1 *Legislation*

- a. *Local Government Act 1999*
- b. *Development Act 1993*
- c. *Development (Regulated Trees) Amendment Act 2009*
- d. *Development (Regulated Trees) Variation Regulations 2011*

#### 3.2 *Other References*

- a. City of Holdfast Bay Street Tree Strategy and Planting Guide
- b. City of Holdfast Bay Strategic Plan
- c. City of Holdfast Bay Development Plan
- d. City of Holdfast Bay Open Space and Public Realm Strategy
- e. AS 4373—2007

## Appendix 1: Street Tree Spacing Requirements

### Clearances

Infrastructure	Clearance Required
Corners	5m
Crossovers	3m
Stobie Poles	3m
Underground services pits	2m from edge
Storm water inlet	2m from edge
Stop, Give Way & Speed Signs	5m (front) or 2m (behind)
Other Signs	2m

- Trees must be planted central to verge. If there are to be multiple trees on verge, the tree must be the distance of its potential canopy spread of the selected tree species to prevent entanglement of canopies when trees reach maturity.

### Verges

Verge Width	Approximate Tree Height
Up to 1m	Do not plant
1-2m	Small Tree at 5 -7m
2-3m	Medium Tree 7-10m
3m +	Large Tree 10-13m

### Holes

- Hole depth must be no greater than 300mm.

## Tree Management Policy

### Appendix 2: Guidelines for Contractors

- Construction works occurring in the vicinity of large trees, particularly Norfolk Island Pines, will not be undertaken where it is likely to damage or interfere with any part of the tree including roots without consulting with the General Manager, City Assets or his nominated representative.
- No root shall be severed closer than three metres from the base of any tree before consideration has been given to:
  - Accepting minor variations in line and level of pavement, kerbing, gutter and drainage or service system,
  - The use of permeable or replaceable surfaces, including gravel, rubble or similar around the base of the tree
  - Use of infiltration or soakage holes for minor drainage problems – with due regard to potential pollutants.
- Where root pruning is deemed necessary, work will be done under the supervision of the General Manager, City Assets or his nominated representative, generally the Manager Works & Environmental Services. In the event of any dispute, professional advice will be obtained from a qualified arborist or suitably experienced person.
- All works in the vicinity of trees shall take into account:
  - Provision of permeable surfaces up to 3 metres in diameter from the base of trees,
  - Provision of infiltration points for all trees surrounded by hard surfacing,
  - Directing run-off to the trees root zone rather than underground drainage systems.
- Any construction work or designs that are unable to meet the above criteria will not be approved, without consultation with the General Manager, City Assets. In the event of any dispute, an independent opinion shall be sought as stated above or by a report to Council for decision.
- All excavations around trees, including by Contractors, on trees larger than 10 metres will be inspected by an appropriate officer from Works & Environmental Services to consider alternate methods such as:
  - modifying design of KWT, or
  - not installing KWT in this section of road.

# Attachment 3





**ACER HORTICULTURAL SERVICES**

**Mark Eitzen**

**Arboricultural & Horticultural Consultant.**

**Diploma of Horticulture**

**Diploma of Arboriculture**

**Member South Australian Society of Arboriculture**

**111 Strathalbyn Road. Aldgate. 5154.**

**Phone: 8339 4564**

**Mobile: 0406 016612**

**Email; mark@markeitzen.com**

**ABN; 80040108365**

**ARBORIST REPORT:**

**Date:** 5<sup>th</sup> October 2018

**RE:** The damage and problems arising from the roots of a mature Eucalyptus tree growing on the council verge occurring to the property 10 a Augusta Street Glenelg.

The information in this report is based on my observations on the day of the inspection and makes comments based on my experience and in reference to:

*The Regulated Trees Development Plan Amendment, -The Regulated Trees DPA  
The Australian Standard AS 4970-2009 Protection of trees on development sites.*

*Legal Services Commission of South Australia - Trees and the Law*

**Client:** Chris Grant.

**Address:** 10a Augusta Street Glenelg.

**Council Area:** Holdfast Bay Council.

**ACER HORTICULTURAL SERVICES**

**CLIENT NAME:** Chris Grant.

**ADDRESS:** 10a Augusta Street Glenelg.

**Table of Contents:**

**Introduction:** ..... Page 3

**Extent of Assessment / Report:** ..... Page 4

**Statutory or Legal Status:** ..... Page 4

**Description:**..... Page 5

***The Australian Standard AS 4970-2009:***..... Page 6

**Site Plans:**..... Page 6

**Photographs:**..... Pages 7.8.9

**Trees and the Law**

***Legal Services Commission of South Australia:***..... Page 10

**Summary:**..... Page 10

**Foot Notes & References:**..... Page 11

**Introduction:**

This arborist report was requested by Chris Grant of 10 a Augusta Street Glenelg. Chris asked me to compile an arborist report in reference the damage and problems occurring to her property arising from the roots of a mature *Eucalyptus tree* growing on the council verge.

I inspected the tree and the site on Monday 1<sup>st</sup> October and discussed the issues associated with the trees roots with Chris.

**Aerial photograph showing the location of the subject tree.**



## **Extent of Assessment / Report; Limitations/Constraints.**

The information in this report is based on my observations on the day of the inspection and makes comments based on my experience.

This report has made observations and recommendations with limited tools and in good faith by the reliable method of VTA (visual tree assessment) developed to an international standard. The tree was not climbed to seek out any unforeseeable anomalies. Sophisticated equipment such as ground penetrating radar and sonic tomography was not employed to obtain visual information of the timber quality within the trunk or the status of the root plate beneath the ground. I assessed the health and structure of the tree and looked for evidence of \*biotic disease and abiotic disease/distress. It must be noted that trees are dynamic living organisms and can do the unexpected. Tree health and structure often changes with time and therefore the observations and recommendations made by this report are related to what was reasonably foreseeable at the time of inspection and the advice given does not constitute a guarantee of any kind as to the future safety, health or performance of the tree.

This report is intended for the sole use of the client named on the report and relevant authorities. It must not be reproduced or made available to third party members without written consent from Acer Horticultural Services.

## **STATUTORY OR LEGAL STATUS**

Division 2 Section 23.4(a) of the Development Act 1993

On 17 November 2011, the Development Act, Development Regulations and Development Plan in relation to Significant trees were amended with the passing of the *Development (Regulated Trees) Amendment Act 2009* and the *Development (Regulated Trees) Variation Regulations 2011*. The *Regulated Trees Development Plan Amendment - 'The Regulated Trees DPA'* was subsequently legislated within a zone where the Development Act applies.

The effect of these amendments is that a **significant tree** is a regulated tree with a trunk circumference of 3.0m or more (measured at a point 1.0m above natural ground level).

In the case of trees with multiple trunks, significant trees are those with trunks having a total circumference of 3.0m or more and an average circumference of 625mm or more (measured at a point 1.0m above natural ground level).

A **regulated tree** is any tree with a trunk circumference of 2.0m to 3.0m (measured at a point 1.0m above natural ground level).

In the case of trees with multiple trunks, regulated trees are those with trunks having a total circumference of 2.0m or more and an average circumference of 625mm or more (measured at a point 1.0m above natural ground level).

Within a zone where the Development Act applies.

## **Description:**

**Tree Species;** *Eucalyptus botryoides*. - Bangalay, Southern Mahogany.

I estimate the mature tree to be approximately 45- 50 years old, 12 -14 metres in height with canopy spread of approximately 8m N. 7m S. 9m E .10m W.

The tree exhibits good health, form and structure and could potentially live for another 50 years under the current environment and growing conditions.

There is evidence of canopy modification – branch removals and reductions.

### **Circumference at one metre above ground level = 3.67m**

Therefore the tree meets the legislative threshold of a *Significant tree* under the current legislation.

**Location:** See photographs and site plan provided.

The 'street tree' is growing on the council verge in the front of the property 10 a Augusta Street Glenelg.

The base of the tree is:

1.80m from the brick wall defining the front boundary of the property.

6.20m from the concrete path abutting the house.

7.20m from the footings of the house .

9.70 m from the driveway.

**Observations:** See photographs provided

- ❖ Numerous exposed surface roots (diameter 3- 10 cm) were observed within the front lawn section of the property.
- ❖ Large patches of bare soil where the lawn was not growing or struggling to grow was evident.
- ❖ Extensive damage - lifting and cracking to the concrete driveway.
- ❖ A crack in the concrete base and lifting of the brick wall defining the front boundary of the property.
- ❖ The slight lifting of a section of the concrete path abutting the house.
- ❖ There were no other trees or plants growing within proximity to the damaged driveway that could be considered responsible or contribute to the damage.

## **Conclusions:**

- ❖ The roots of the council street tree are responsible for the damage observed as stated.
- ❖ I would consider the extensive lifting and cracking of the concrete driveway and the exposed surface roots in the lawn as a tripping hazard.
- ❖ It would not be reasonably practical to repair/replace the driveway or reinstate a lawn or landscape the front area to create a garden without cutting and removing the roots of the tree.
- ❖ The volume of tree roots that would have to be cut and removed would result in the decline of tree health and ultimately the demise of the tree.
- ❖ It may be possible to install a \*root barrier to prevent potential damage to the footings of the house and potential future damage to a new driveway, although it would not be practical as this would involve cutting a large volume of roots that would be detrimental to the trees health and not resolve the problem of the numerous exposed surface roots in the lawn.
- ❖ It would not be possible cut or remove the numerous tree roots within the lawn area as this would result in the decline of tree health and ultimately the demise of the tree.
- ❖ I have calculated the root zone dimensions using the *AS 4970-2009* formula to demonstrate the extent of the tree roots.

**The Australian Standard AS 4970-2009 for trees on development sites.**

**The Tree Protection Zone Measurements Re; Tree Protection Zone calculations;**  
**Tolerance to Development**

Diameter at Breast Height DBH = 1.20m

DBH x 12 (AS 4970-2009) = 14.40m

**\*Tree Protection Zone = 14.40 from the centre of the tree.**

Diameter at Base of Tree DAB = 1.40mm

**\*The Structural Root Zone (SRZ) = 3.81 from the centre of the tree.**

The 'street tree' is growing on the council verge in the front of the property 10 a Augusta Street Glenelg.

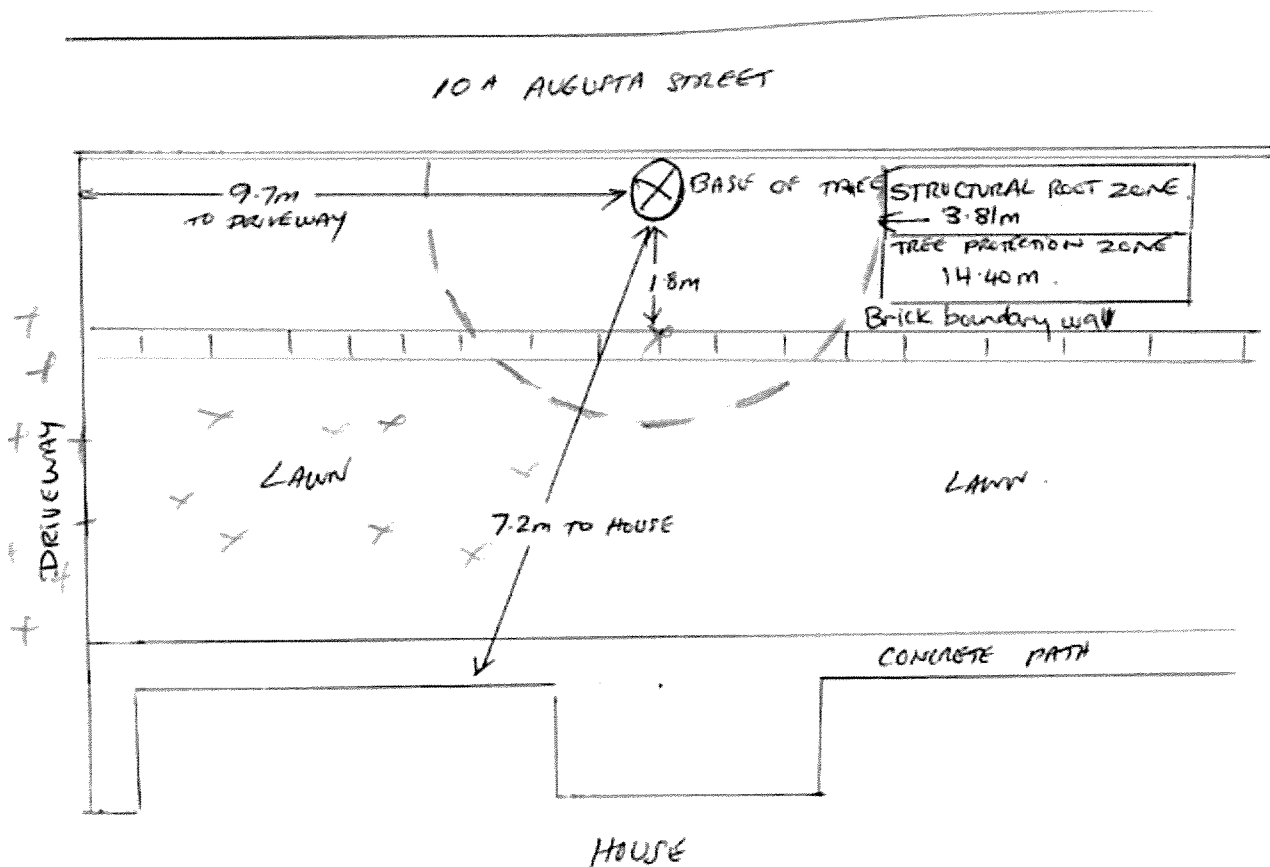
The base of the tree is:

1.80m from the brick wall defining the front boundary of the property.

6.20m from the concrete path abutting the house.

7.20m from the footings of the house.

9.70 m from the driveway.



- ❖ The 'street tree' is growing on the council verge in the front of the property 10 a Augusta Street Glenelg.



- ❖ The base of the tree is 1.80m from the brick wall defining the front boundary of the property.



- ❖ A crack in the concrete base and lifting of the brick wall defining the front boundary of the property.
- ❖ The slight lifting of a section of the concrete path abutting the house.

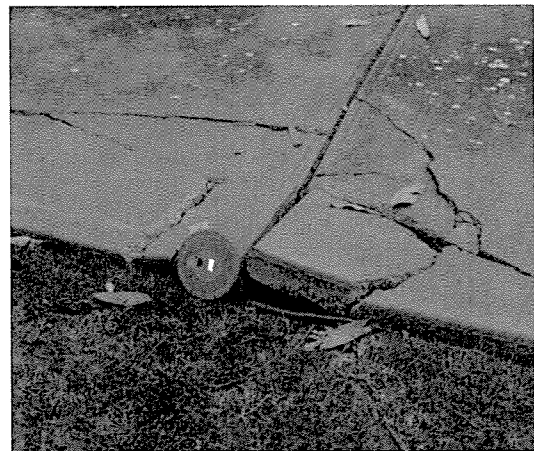
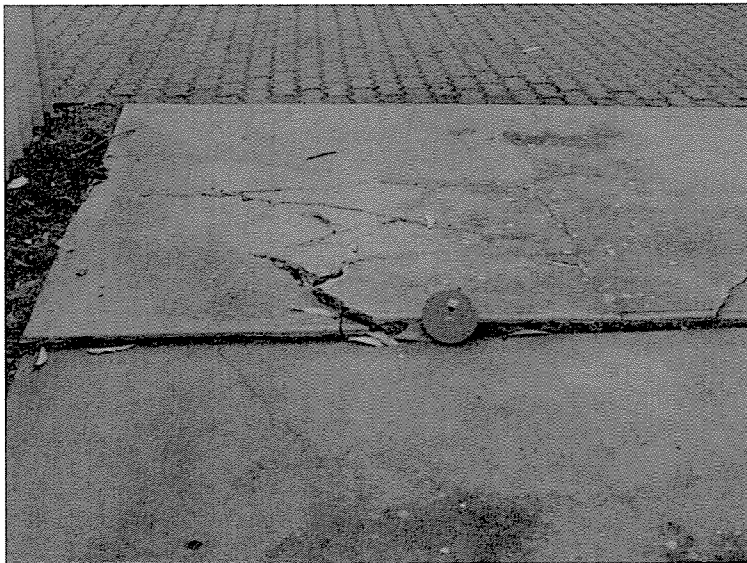


- ❖ Numerous exposed surface roots (diameter 3- 10 cm) were observed within the front lawn section of the property.
- ❖ Large patches of bare soil where the lawn was not growing or struggling to grow were evident.





- ❖ Extensive lifting and cracking of the concrete driveway.



The Local Government Act 1999 s 245(1) states that local council cannot be made liable for problems associate with trees growing on public land.

However I have printed some extracts from Trees and the Law *Legal Services Commission of South Australia* that would apply if the tree was not growing on public land and consider that in all fairness should take into account.

- ❖ To establish that the tree owner is legally responsible an affected neighbour must first show that a particular tree is the cause of the problem.
- ❖ If a tree can be identified as the source of the problem the trees owner may be liable (Legally responsible).
- ❖ (c) 5 Tree roots growing over the boundary are legally a 'nuisance'.  
A nuisance is an unreasonable and substantial interference with the neighbouring owners use and enjoyment of their land.
- ❖ In most cases the legal remedy for penetrating roots is the right to cut them off at the boundary.  
This is not advisable. The tree is protected by the *Significant tree* legislation and Council law. Any damage to the tree would result in the decline of tree health and legal ramifications.
- ❖ Generally speaking it is the tree owner who is liable for a nuisance situation. But liability will usually depend on whether the tree owner was aware or should have been aware of the nuisance situation which created a risk of damage to the neighbour.
- ❖ Tree owners have been held by courts to be liable to pay compensation for damage caused by roots penetrating the soil across the boundary in the following situations:  
Breaking of concrete paving. Roots undermining boundary wall causing it to collapse.  
Damage to lawn & garden.

#### **Summary:**

- ❖ It is obvious that the roots of the council 'street tree' are responsible for the damage to the lawn, driveway and the lifting of the front boundary wall.
- ❖ The existing damage to the driveway and the exposed surface roots in the lawn represent a tripping hazard.
- ❖ The existing 'problems' and the potential risk of damage to the footings of the house will increase exponentially as the tree ages and the trees root system continue to grow.
- ❖ It would not be practical to install a root barrier.

**Mark Eitzen**  
**Arboricultural & Horticultural Consultant.**

**Footnotes:**

**The Structural Root Zone (SRZ) & The Tree Protection Zone (TPZ) Measurements are given as a radial distance from the centre of the tree.**

**The Structural Root Zone (SRZ)** is the calculated area required for tree stability. AS4970-2009 is the calculated area of the root zone and crown area that requires protection to ensure a tree remains viable. AS4970-2009. The SRZ & TPZ measurements are given as a radius in metres from the centre of the trunk. Under section 3.3 of AS4970-2009 it is recommended that encroachment into the TPZ of any tree be 10% or less provided the encroachment does not extend into the SRZ. If TPZ encroachment is greater than 10% or within the SRZ, this would be considered a *Major encroachment* and a project arborist would have to demonstrate that the tree/s health & structural integrity could remain viable. This may require a root investigation by non-destructive methods and consideration of relevant factors including: The soil characteristics, topography and drainage. The tree species tolerance to root disturbance. The age and vigour of the tree. The potential loss of root mass resulting from the encroachment.

If development approval is given for *major encroachments* (e.g. trenches /building footings) to be installed within the TPZ, trench or pier holes may require excavation with non destructive techniques such as hand digging or air spading that would have to be undertaken prior to the development assessment & approval process. In most cases pier and above grade beam footings or waffle pod footings will be prescribed

**\*Root Barriers** can be installed between the tree and the structure under threat of damage. This is achieved by digging a trench, generally about 1 -2 metres deep between the tree and the structure under threat, cutting the tree roots, installing the root barrier material and back filling. This stops the roots growing in that direction, preserving the tree and preventing further damage to the structure of concern

**References:**

Division 2 Section 23.4(a) of the Development Act 1993 – The Significant Tree Legislation.  
*The Regulated Trees Development Plan Amendment -The Regulated Trees DPA*  
*Trees and the Law* – Legal Services Commission of South Australia.



# Attachment 4



# SYMATREE



## **Street Tree Assessment – 10a Augusta Street, Glenelg**

**Report prepared for**

Mr Ben Hall  
Technical Arboriculture Officer  
City of Holdfast  
June 2019

**Report prepared by**

**Sam Cassar**

Cert. (Hort), Dip. (Hort), Dip (Arb), B.App. Sc (Hort), Grad. Dip. Design (Land.)

## Table of Contents

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Introduction .....	3
Observations .....	4
Appraisal .....	9
Conclusion .....	15
Appendix A - Aerial Image .....	16

## **Introduction**

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### **Instructions**

I was instructed by Council to inspect a mature Southern Mahogany located within the verge area in front of 10a Augusta Street, Glenelg. My brief was to provide information on the following:

- assess the general health and structure of the tree;
- determine if the tree is significant or regulated, and
- recommend appropriate.

### **Site Visit**

I carried out a site inspection on the 6 June 2019.

### **Limitations**

This report is limited to the time and method of inspection. The tree was inspected from ground level only. Neither a climbing inspection or a below-ground investigation was performed. No soil or plant material samples were taken for laboratory analysis.

This report reflects the state of the tree as found on the day. Any changes to site conditions or surrounds, such as construction works undertaken after the inspection, may alter the findings of the report.

The inspection period to which this report applies is three months from the date of the site visit, on the basis that current site conditions remain unchanged.

### **Date of Report**

This report was written on the 8 June 2019.



## Observations

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Figure 1: Subject tree, viewed from the north.

### Location of tree

The tree is located in front of 10a Augusta Street (refer Figure 1). The majority of the tree's growing environment is covered with bitumen, pavers or concrete. The trunk centre is 7.6 metres from the front of the nearest unit located to the south, 2.3 metres from the front masonry fence, 0.8 metres from the back of kerb and its base is 0.60 metres from a Telstra pit to the south-east.

The trees' approximate location is identified on the aerial image listed in Appendix A.

## Observations (cont)

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### Species

*Eucalyptus botryoides*, commonly known as a Southern Mahogany

### Crown attributes

Height: 17.60 metres (clinometer)

Width (crown radius measured from the tree's base): 8.1 metres from the east, 7.9 metres to the north, 6.8 metres from the south and 9.8 metres from the west.

### Circumference at one metre above natural ground level:

Single trunk: 3.71 metres

The tree qualifies as a 'significant' tree under the Development (Regulated Trees Variation) Regulations 2011.

### Structure/Condition

The subject tree consists of a single trunk that divides between 2.0 to 3.5 metres from ground level to form a near rounded crown that has a bias towards the north-west.

The trunk appear sound, stable with no cavities, scarring or evidence of internal decay, termite or high levels of borer activity. Minor kino (sap) staining and few exit holes are apparent.

The crown is in good health with average foliage density and vigour throughout. The tree is free from notable pests and diseases. Some dead wood is present at various points throughout the crown, largest of which has a diameter of 80mm and is located lower crown south-eastern side (refer Figure 2). Moderate volumes of epicormic growth are noted inner crown.

The subject tree has been lopped approximately between 5 – 6 metres from ground with the entire main branching framework affected (refer Figure 3). This lopping occurred sometime ago. The majority of the crown now consists of mature and semi-mature epicormic regrowth, particularly evident lower crown.

Some of the branch unions at lopping points are tightly held and included but appear to be sound with no risk of branch failure at this time. Dead stubs are noted, mid-crown from previously poorly implemented pruning.

Tree form was considered to be fair with some overextended branches noted particularly on the tree's western side, lower crown and mid crown north side. The tree does display a minor history of branch failure.

## Observations (cont)

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The subject tree has been pruned in the past. This pruning occurred over a number of occasions with wounds noted at various points throughout the crown. Reactionary wood is present around or has totally engulfed many of these pruning wounds.

A number of exposed woody roots some as large as 80mm in diameter are evident within the front lawn area of 10a Augusta Street (refer Figure 4).



Figure 2. Largest dead branch, lower crown south-eastern side, indicated in red.

## Observations (cont)

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Figure 3. Lopping points circled in red.



Figure 4. Exposed woody roots front lawn 10 a Augusta Street, indicated in red.

## Observations (cont)

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### Property Damage

Damage observed that may have been caused by root activity from the subject tree includes the following:

- Extensive cracking and heaving to the concrete driveway (refer Figure 5). The driveway is only 50 – 55mm thick;
- Minor heaving to the front masonry fence;
- Minor heaving to the concrete path surrounding the unit; and
- Minor heaving to the paved footpath.

No obvious damage to the front façade of the closest units was observed.



Figure 5. Note damage to concrete driveway.

# Appraisal

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## Subject Tree

The tree is a mature specimen in good health with no notable defects that would justify its removal at this time. The subject tree is considered to be a significant under the current provision of Development (Regulated Trees Variation) Regulations 2011.

The tree is one of the largest trees within the immediate locality. This tree has a strong visual presence, making it a prominent feature in the landscape. The subject tree has a high aesthetic value and makes an important contribution to the landscape character and amenity of the local area. The tree is not considered a local indigenous species to the greater Adelaide Plains.

It is acknowledged this tree has been lopped in the past but presents as being stable with only a minor history of branch failure apparent. The tree does display defects such as overextended branches that are at risk of failure in the future.

To address crown defects and reduce the future failure potential and maintain risk to acceptable levels, pruning options are available. It is expected the subject tree will offer a long useful life expectancy. However, this is subject to being maintained and management by a qualified arborist on a regular basis.

Specific pruning for the subject tree and the issues of property damage have been specified in a latter section of this report.

## Risk Assessment

A risk assessment of the subject tree has been provided using the *International Society of Arboriculture* tree risk assessment method.

The method calculates risk in two steps; the likelihood of a failure occurring and the likelihood of the failure impacting a target. The matrixes determine the likelihood of the possible failing part or parts impacting a target.

I am qualified to use the 'International Society of Arboriculture tree risk assessment method'. More information about this method can be found in the American Standard ANSI A300 Part 9: - Tree Shrub and other woody plant management – Standard Practices and Tree Risk Assessment Manual by International Society of Arboriculture 2013.

Factors taken into account during a risk assessment include history of branch failure, likelihood of failure, tree age, health and vigour, level of previous maintenance performed, current defects, species characteristics, surrounding site factors, potential targets and occupancy rates.

Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impacting Target			
	Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

## Appraisal (cont)

Matrix 2 Risk rating matrix

Likelihood of Failure & Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very Likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat Likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low

In this tree risk assessment, I have considered the following specific factors in the likelihood matrix:

- The tree does extend over the southern lane of Augusta Street which is considered a local road with moderate traffic volumes.
- The tree only has minor overhang over the adjacent units
- This tree has a minor history of branch failure.
- I found no evidence of extensive internal decay or other significant defects within the branching structure and the tree is in good health.
- The tree has been well maintained in the past.
- The likelihood of whole tree failure and main leader failure under normal weather conditions in the coming two years is considered to be improbable.
- The likelihood of a small to medium sized live branch failure under normal weather conditions within the coming two years is considered to be possible.

### Target Assessment

The following assessment is based upon existing site use under normal seasonal weather conditions. An approximation of the likely occupancy of the targets identified has also been provided. The potential targets that would be impacted if branch failure were to occur include:

Potential Targets	Likelihood of Impacting the Target
Road Users, moderate traffic volumes, intermediate use targets	Medium
Footpath Users, Small part of the pedestrian footpath, intermediate use targets	Low
Adjacent units – minor overhang	Low
Front yard and Driveway users – 10a Augusta Street, intermediate use targets	Low
Masonry Front Fence – 10a Augusta Street stationary target	Medium

### Likelihood of failure

I consider the likelihood of a part failing from the subject tree is possible. This determination is based upon the following assumptions:

- The crown displays no significant defects.
- Pruning options are available to address crown defects.
- The tree has a minor history of live branch failure.

## Appraisal (cont)

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### Consequences of failure

I suggest the branch sizes most likely to fail are approximately 60 – 80 mm in diameter. The consequences of a branch of this size impacting the potential targets are as follows:

Potential Targets	Consequences of failure
Road Users	Severe harm to persons/minor damage to travelling cars
Footpath Users	Severe harm to persons
Front yard and Driveway users	Severe harm to persons, minor damage to parked cars
Adjacent units	Minor damage to roof structure
Masonry Front Fence	Minor damage

### Failure Rating

The failure rating for each of the identified potential targets are as follows:

Potential Targets	Failure Rating
Road Users	Low
Footpath Users	Low
Front yard and Driveway users	Low
Adjacent units	Low
Masonry Front Fence	Low

The result of this risk assessment for the subject tree was an overall **low** risk rating.

### Pruning Requirements

In general the following pruning requirements are recommended to address the defects observed. In summary only minor pruning is required.

- Reduce the overextended areas lower /mid-crown northern side and lower south-western side as indicated in Figures 6 and 7 back to suitable laterals. Assess each lateral branch and prune to reduce extension growth. This pruning should not exceed any more than 20% of the total branch length and not exceed branches with diameters of approximately 50 - 70mm. Pruning should be performed to encourage good quality branch structure and maintain or enhance the tree's natural habit.
- Thin excessive epicormic growth inner crown by 20 – 30%. Pruning should be performed to encourage good quality branch structure and maintain or enhance the tree's natural habit
- Aerially inspect all mid to upper canopy branch unions and reduce branches as required if defects are identified.
- Remove dead branches over 30mm in diameter, branch stubs from previous branch failure/s and defective branches that cannot be observed from ground.
- All pruning must be in accordance with Australian Standard, AS 4373-2007 *Pruning of Amenity Trees* and completed by a suitably qualified Arborist (minimum Level 5).



## Appraisal (cont)

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- Monitor tree health, stability and management requirements every 18 to 24 months subject to growth rates. The subject tree will require ongoing assessments and regular crown management, including further pruning in the future.

I suggest Development approval is not be required as the pruning specified will not have a detrimental impact upon the aesthetic appeal or health of the subject tree or exceed greater than 30% of the overall crown.



Figure 6: Crown area northern side requiring reduction, circled in red.



Figure 7. Crown area over driveway requiring reduction, circled in red.

### Property Damage

The main concerns appear to be the issue of damage to adjacent private property.

No damage to the adjacent Units that can be attributed to the subject tree was observed when the assessment was conducted. However, damage to private property including heaving and cracking to the concrete driveway, heaving to the concrete path surrounding the units and to the masonry fence was observed.

Trees contribute to the damage to adjacent infrastructure in two ways. The first is by root growth exerting upward pressure to lift and other adjacent infrastructure causing heaving and cracking.

Cracking to driveways and other structures are caused by a number of factors including; seasonal swelling and shrinkage of clay soils, settlement after construction, poor construction methods and materials, damaged water sewer or storm water pipes, incorrect guttering, blocked or damaged gutters. I observed the driveway was only 50 – 55mm thick with no reinforcing.

## Appraisal (cont)

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It is typical that once trees have reached maturity, (as is the case with the subject tree) equilibrium between root activity and surrounding infrastructure is achieved, with no future damage to surrounding infrastructure expected. Achievement of such an equilibrium does depend on whether the surrounding infrastructure has been constructed in accordance with recognised engineering standards and the needs of the subject tree are taken into account. There are hundreds of examples where mature Trees and surrounding infrastructure have coexisted without damage occurring.

I do not believe I am appropriately qualified to determine if the subject tree, other contributing factors or a combination of the two are responsible for the damage noted. Therefore it is recommended a suitably qualified structural engineer be engaged to conduct an investigation to confirm if the subject tree is the primary cause of the damage observed and if alternatives to tree removal of the subject tree can be considered.

### Tree Protection Zone (TPZ)

A TPZ is required to retain the critical root zone (CRZ), protect the crown and to ensure that tree health and viability is maintained. The TPZ is also calculated and applied with consideration to the possible impacts that encroachments may have on a tree's health and long term viability.

In addition to the TPZ, the structural root zones (SRZ) also needs to be calculated to determine the area required to ensure tree stability. The TPZ is typically a larger area and is required to maintain a healthy viable tree.

Using the Australian Standard for the Protection of Trees on Development Sites (AS 4970) the following TPZ and SRZ have been calculated for the subject tree:

TPZ (radius)	TPZ Area	SRZ
15 metres	706m <sup>2</sup>	3.8 metres

### Impacts from Root Barrier Installation

The Australian Standard for the protection of trees on Development sites (AS 4970) allows encroachment into an optimum TPZ by 10% of the overall calculated area.

A root barrier typically requires a trench to be excavated to a depth of at least 0.5 to 1 metre. Such excavation would sever roots if any are located within that area. An imperious barrier with the upper edge exposed to protect the dwelling from future root activity.

A root barrier installed parallel to the existing masonry fence would be considered major encroachment given its relatively short distance to the subject tree (2.3 metres). This would cause tree damaging activity with the death of the tree highly likely.

However, a root barrier could be installed parallel to the existing footing of the units given the levels of root activity under the units would be low given the area is hostile for root development. In addition, no encroachment into the tree's SRZ is required therefore no impact to overall tree's stability is expected. However root barrier installation is subject to the following guidelines being adhered to at all time:

- tree sensitive construction techniques (i.e hydro vac) used to excavated the required trench; and
- root pruning (If required) is to occur by a suitable qualified arborist (at least a level 5)

## Appraisal (cont)

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Therefore it is reasonable to predict that the tree will tolerate the installation of a root barrier if installed along the edge of the unit's footing and all reasonable measures and precautions are taken to protect the subject tree during its installation (i.e. the width of the trench is kept to an absolute minimum).

### Driveway Repair Guidelines

It is reasonable to expect repairs to the driveway will occur. The following should guide future repairs to ensure tree damaging activity does not occur to the subject tree:

- Removal of the existing concrete surface should be undertaken by careful excavation, using non-invasive techniques such as hand digging/ jackhammer or air- excavation. All excavation works within the TPZ of the subject tree must be supervised by a suitably qualified Arborist (level 5 or higher). Any tree roots located should be very carefully exposed using the non-invasive techniques already mentioned above.
- All structural roots (roots with a diameter greater than 30 millimetres) encountered should be retained, if possible.
- To allow for the retention of structural roots, some modification to driveway levels may be required, such as removing lower sections of the base to accommodate the roots.
- Root pruning can occur if only a small numbers of structural roots are encountered.
- If root pruning is required, the root should be uncovered by hand digging, and severed by a pruning saw or secateurs. Machinery or blunt instruments should not be used for this purpose.
- Roots should be cut to a lateral root where possible. All root pruning should be undertaken by a qualified arborist.
- Backfill the excavation as soon as possible and water to avoid leaving air pockets.
- Consideration could be given to raising the existing driveway surface, if lowering is not possible. The affected areas could be raised once existing concrete has been removed, with a structural soil, gravel or similar material in conjunction with a geo-textile fabric. These materials should be installed between the root and re-laid driveway surface to aid and reduce direct root pressure on the driveway. Some changes to surrounding grades may be required.

It is recommended appropriate engineering specification/advice be obtained before any of the above alternate design alternatives are implemented. This advice may need to be commissioned and developed prior to the commencement of these work.

## Conclusion

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The subject tree, a Southern Mahogany is in good health with no notable structural defects that indicate it poses an unacceptable risk to public or private safety at this time. Applying the *International Society of Arboriculture* tree risk assessment method a low risk rating was determined.

In addition, the subject tree provides a high level of amenity to the locality and pruning options are available to maintain risks to acceptable levels.

On the basis of the factors outlined, I consider the subject tree is **worthy of retention**.

The main concerns appear to be the issue of damage to adjacent private property.

It is recommended a report from a suitably qualified structural engineer be obtained to determine if the subject tree or other contributing factors have caused the damage noted and if alternatives to tree removal can be considered to retain the subject trees. A qualified engineer would be in a better position to make a detailed technical assessment of the most suitable repair methods and allow the retention of the subject tree.

All attempts should be made to retain such valuable tree and repair the damage observed adhering to the driveway repair guidelines specified as part of this report.

I do recommend pruning as specified as part of this report occur in the coming 3 months and an assessment of tree health, stability and management requirements occurs every 18 to 24 months, subject to the growth rate of the tree.

I wish to stress that trees are natural living organisms and it would not be professional or prudent to guarantee the absolute safety of any tree. This is not possible unless trees were made from inert substances and most reasonable people would not make that choice.

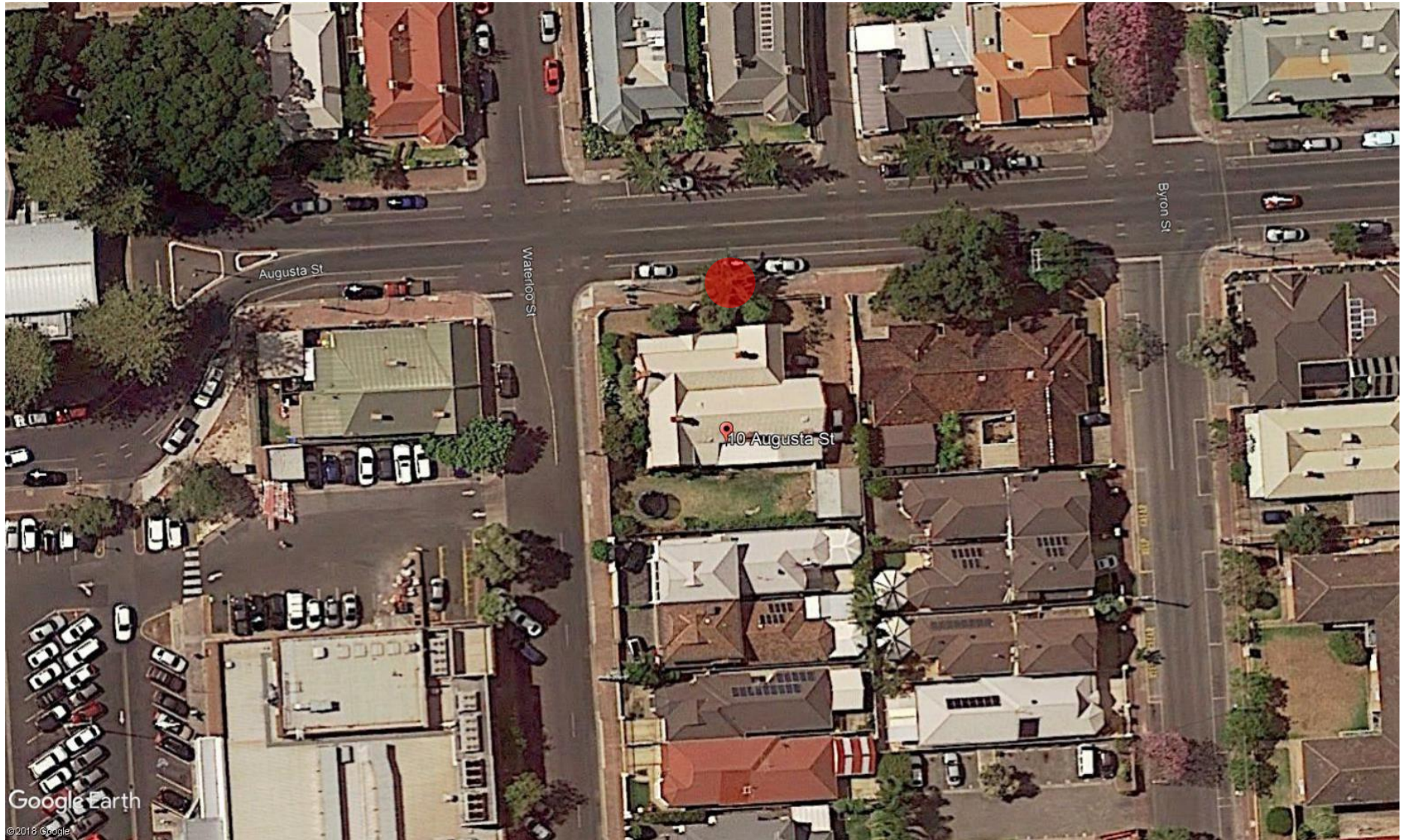
Thank you for the opportunity in providing this report. Should you have any questions or require further information, please do not hesitate in contacting me.



**Sam Cassar**

## **Appendix A**

### **Aerial Image**



# Attachment 5





[holdfast.sa.gov.au](http://holdfast.sa.gov.au)

Brighton Civic Centre 24 Jetty Road, Brighton SA 5048

PO Box 19 Brighton SA 5048

P 08 8229 9999 F 08 8298 4561

Glenelg Customer Service Centre and Library

2 Colley Terrace, Glenelg SA 5045

2 September 2019

Ms Christine Grant  
PO Box 44  
GLENELG SA 5045

Dear Ms Grant

### **Without Prejudice Save as to Costs**

#### **Street tree and property damage at 10A-10C Augusta Street Glenelg**

We refer to your previous correspondence and telephone conversations regarding the street tree and property damage to 10A-10C Augusta Street Glenelg.

Council engaged an independent Arborist to conduct a Street Tree Assessment of the subject tree at 10A- 10C Augusta Street Glenelg in June 2019. The outcome of the assessment concluded that the subject tree which is a significant *Eucalyptus Botryoides*, is structurally sound, in good health with no notable defects that would justify its removal at this time. The arborist concluded that the tree has a high aesthetic value and makes an important contribution to the landscape character and amenity of the local area. The tree is worthy of retention and some minor pruning recommended which has now been completed.

Council's is required to manage the subject tree in accordance with the *Development Act* (as this tree is classified as a significant tree which affects the maintenance of the tree). The *Development Act* stipulates that Council prune no more than 30% of the tree canopy. Council would manage any development application requirements for maintenance i.e. pruning of the tree as required.

Section 245 of the *Local Government Act* provides Council with immunity in that a Council is not automatically liable for any damage to property which results from the planting of a tree, or the existence of a tree (whether planted by Council or not). Council acts as 'caretaker' of trees, but Council do not have an absolute responsibility for trees. This is due to Council's managing a very large number of trees and community expectation is to continue to plant and grow trees.

In order to ensure a consistent approach Council applies the approaches outlined in its Tree Management Policy for the management of trees (copy attached- also available on Council's webpage).

As advised previously, Council is indemnified by the Local Government Association Mutual Liability Scheme (the Scheme). Council has consulted with the Scheme and has been advised that it is not liable for any property damage from the subject tree, at this time. The approach below is therefore endorsed by the Scheme.





In accordance with Council's Tree Management Policy, point 2.1 (u) and (v) and to assist you in the management of the subject tree, Council agrees to provide (at Council's cost) a root barrier for the installation at the Strata Corporation's expense. Council suggests that the Strata Manager/residents engage an experienced and qualified contractor to install the barrier. Council's Technical Officer, Arboriculture, Ben Hall could meet with the preferred contractor which we recommend.

Due to the extensive root system the root barrier installation will need to occur on the private land in front of the dwellings (i.e. not on Council footpath) and at a distance sufficiently set back from the tree base, so as to ensure that the health and structural integrity of the tree are not compromised by the barrier or associated root pruning which may be required. Council's Technical Officer Arboriculture has provided recommendations for the installation of this product- see attached specifications.

The Strata Corporation and residents should be aware that tree root barriers serve as a mitigation device only, that is, they can restrict tree root activity. Barriers do not absolutely prevent tree root activity and therefore you, other residents and the Strata Corporation should be aware of this. Council would not be liable in the future, should the barrier fail to prevent future tree root activity.

Prior to the installation of the root barrier the residents or contractor should contact 'Dial Before You Dig' to ensure that no damage is caused to underground third party services. Any damage to third party services would be the responsibility of the resident or contractor responsible for the works.

In this instance, Council is prepared, as a gesture of goodwill and with no acceptance of any liability or any future binding obligations, to make an ex-gratia offer for the root barrier instalment cost, upon agreement and acceptance by the Council of the quote provided by the Strata Corporation or residents to the Council. This payment would be subject to the root barrier being installed by an experienced and qualified contractor as per the specifications attached and if an issue does arise during installation, Council's Technical Officer Arboriculture must be consulted. Council recommends a suitably qualified contractor such as Urban Virons Group, Taking Care of Trees or Statewide Hydrojet.

Once the works have been completed, Council asks the Strata Manager to pay for the cost of the root barrier installation and upon providing a copy of the tax invoice, proof of payment and receipt of a signed Release & Indemnity Form, Council will issue the ex-gratia payment as per the agreed sum.

In terms of Council assisting with or contributing to the driveway repairs or replacement, concrete footpath repairs or replacement or other repairs, Council is unable to assist with the removal of the existing driveway or any repairs to private as it is not considered the Council is liable for any property damage from the subject tree. For property damage you could consider contacting your own insurance company to claim for property damage (or strata insurance cover if relevant).

Please arrange for a quote to be provided to Council for the root barrier installation and we can proceed to agree the ex-gratia payment on the basis of the terms above.

Yours sincerely

A handwritten signature in black ink that reads "Howard Lacy". The signature is written in a cursive style with a large, looping initial 'H' and a trailing flourish.

**Howard Lacy**  
**GENERAL MANAGER, CITY ASSETS AND SERVICES**

Cc Strata Manager – Strata Corporation SP4269, 10A – 10C Augusta Street, Glenelg

Classification:	Statutory Policy.
Trim Container	B2037
Trim Document Number:	DOC/14/30916
First Issued / Approved:	July 2010
Last Reviewed:	January 2015
	C200115/040
Next Review:	January 2020
Responsible Officer:	General Manager – City Assets
Date Placed on Web:	<b>February 2015</b>

**1. PREAMBLE**

The Tree Management Policy provides a framework for street and open space tree management for planting and maintenance within the City of Holdfast Bay.

**1.1 Background**

Trees make an important contribution to the aesthetic of the City of Holdfast Bay and provide practical amenity and add character, whilst providing a range of environmental, social and economic benefits. Planting of trees is also a central component of achieving Council’s Strategic Objective of Greening our City.

The City of Holdfast Bay recognises that the local community will have different views and sensibilities regarding trees. This policy aims to provide a consistent approach to the management of the existing and future urban forest.

**1.2 Purpose**

- a. The Tree Management Policy aims to manage and protect Council’s trees, both in relation to its vision for streetscapes and open spaces, and protection of trees significant or otherwise.
- b. The Policy ensures consistency in future street tree planting and management, and managing the impacts on trees.

**1.3 Scope**

- a. The Policy applies to Elected Members, employees, residents, contractors and volunteers of the City of Holdfast Bay.
- b. This policy provides advice and guidance on the City’s Urban Forest. A separate policy for Street Verges is outlined in the City of Holdfast Bay Street Verges Policy.

**1.4 Definitions**

For the purpose of this Policy the following definitions apply:

- a. Regulated Tree – tree size and characteristics as specified in the *Development Act 1993* and Regulation 6A of the *Development Regulations 2008*.
- b. Significant Tree – tree size and characteristics as specified in the *Development Act 1993* and Regulation 6A of the *Development Regulations 2008*.

### 1.5 *Strategic Reference*

- a. Our Place Plan 2012-2015
  - i) A Place that Values its Natural Environment - "Promote and Implement programs that enhance the greening of the City"
  - ii) A Place with a Quality Lifestyle - "Provide high quality attractive and well serviced open spaces, reserves and streetscapes"

## 2. POLICY STATEMENT

### 2.1. *Street Trees*

- a. Street tree species have been nominated for each street in Council's Street Tree Strategy Planting Guide. This document is available via Council's website.
- b. Street tree species have been selected to meet specific criteria and tolerances, and will be able to perform in our particular environment. Council have considered the following criteria when selecting tree species:
  - i) Compatibility with the local environment,
  - ii) Ability to provide habitat for native bird life/shade/maintenance requirements,
  - iii) Availability of commercial quantity and quality of stock, and
  - iv) Allergies, berry/nut drop, and infrastructure impacts and the like.
- c. Tree species have been selected for the location and will not be altered due to:
  - i) Potential scenic view obstruction
  - ii) Tree species is disliked
  - iii) Potential nuisance by way of berry/ nut drop
  - iv) Shading of private property.
- d. Species selected within the Council's Street Tree Strategy Planting Guide provide a combination of exotics and natives, deciduous and evergreen, and heights.
- e. Additions to the Street Tree Strategy Planting Guide will be considered as necessary, to ensure biodiversity and adaptive management to changing environmental conditions.
- f. Alternative species may be selected to what is listed for the location within the Street Tree Planting Guide to accommodate narrow verges, provide a more suitable species where dwellings are in close proximity to the proposed tree site and for plantings that are in coastal locations.
- g. Recognising the benefits of trees, Council will continue to identify new opportunities for tree planting.
- h. Street trees will be block planted as part of the Whole Street Planting Program and will be the majority of plantings that the council will undertake. This practice will benefit the Urban Forest within the City of Holdfast Bay with the aim to achieve whole avenues of street trees that will in time grow in unison with one another, whilst having a major contribution to the amenity value of the area.
- i. Council will ensure that a number of streets are allocated in the Whole Street Planting Program each planting season. Streets selected will be balanced out

## Tree Management Policy

throughout the City of Holdfast Bay with one to three Streets allocated from each ward per year. The selected streets will be based on current tree stock existing within a street.

- j. Trees will be planted within the guidelines within Appendix 1.
- k. Property owners can apply to plant their own street tree by submitting the "Property Owner Street Tree Planting Form". The tree must be the nominated tree species for the location and is planted as per the guidelines in Appendix 1 of this policy. Planting cannot commence until written notification from Council has been received. Street trees planted by residents become the property of the City of Holdfast Bay. Only property owners can submit a "Property Owner Street Tree Planting Form".
- l. Where possible, each property will have at least one street tree on each frontage, and more where there is adequate space. Exemptions will be at the discretion of the General Manager City Assets or his nominated representative, and will be required in writing, based on criteria such as future development, heritage housing, and narrowness of space available and so on.
- m. Council will heed relevant information from utilities, SA Power Networks and SA Water, in the selection and the planting location of tree species.
- n. No site shall be re-planted due to death or vandalism and no individual plantings can be put through as singular request. However, at the discretion of the General Manager or his nominated representative, singular plantings may occur in areas of high tourism exposure.
- o. Street tree planting will not occur in zones where there is a record of soil contamination or if soil contamination is evident upon digging.
- p. All residential street tree planting will be programmed and undertaken during the cooler months of the year, between May and September each year.
- q. Residents will be advised of the tree species before planting.
- r. Fact sheets on the street tree species are available via the website or available from Customer Service.
- s. Street trees planted by council in locations with high probability of, or consistent vandalism, or in high traffic areas, will be protected by tree guards (civic guards).
- t. Coastal plantings will have coastal surrounds installed at time of planting. Coastal plantings will be only undertaken during August and September to give the best chance of survival.
- u. Council is not liable for any damage to property resulting from a tree planted in the road reserve (under section 245 of the *Local Government Act 1999*) unless a written request to Council regarding the risks has been received from an adjacent owner/occupier of property. When notified in writing of any issue by an adjacent owner/occupier of property, Council will determine an appropriate response to that notification to address its exposure to any ongoing liability.
- v. To assist residents in the management of established street trees causing issues to private infrastructure, including fence, yard and driveway, Council will offer up to 10m of root barrier at Council expense, for installation at resident expense, based on an engineering report of damage provided to the General Manager, City Assets or his nominated representative.

## Tree Management Policy

### 2.2. *Open Spaces*

- a. Open space refers to land that is publically accessible and provided for community benefit (e.g. recreation park, linear trail, sportsground and natural areas). Trees planted within those areas are in accordance with the City of Holdfast Bay Open Space and Public Realm Strategy and will be a selection of Australian natives. However, the City of Holdfast Bay defined Natural Areas will only be rejuvenated with tree species native to the council area and these trees will be planted in areas to benefit the existing flora and fauna and not to suit the recreational needs of users.
- b. Open space tree planting is generally undertaken during the cooler months of the year, between May and September each year.

### 2.3. *Tree Pruning*

- a. Council is responsible for all formative pruning, maintenance pruning and management of the street trees it plants and those that have been planted by residents on Council verges.
- b. Council maintenance of street trees is determined through best practice standards and its street tree procedures. Residents are not authorised to prune street trees on Council property. Where Council street trees are overhanging into private property, residents should contact Council for pruning to ensure the ongoing health of the tree and that the tree is not destabilised.
- c. Council is responsible for all maintenance and management of open space trees within the Council area.
- d. Pruning of Council trees will be carried out in accordance with Australian Standard 4373, 'Pruning of Amenity Trees'. The objective of the Australian Standard is to provide a guide defining uniform tree pruning procedures and practices in order to minimise the adverse or negative impact of pruning on trees.
- e. The age, condition, shape and form for the tree will be taken into account when pruning.
- f. No street tree will be fence-lined as this will result in an unbalanced tree. This will also bring on many other negative effects in terms of the tree's health and structure.
- g. Council will reduce canopies over dwellings as much as possible within reason. Consideration of the tree's significance and heritage listing may alter the approach with the amount of pruning that can occur.
- h. New developments that are constructed under existing canopies will not be pruned to the detriment of the tree.
- i. Council owned trees that intrude into and over infrastructures within the road reserve will be pruned to the following minimum clearance:
  - i) Footpath
    - Edge of footpath – 2.4m (height)
    - Centre of footpath – 2.7m (variations depending on pedestrian traffic loads, sight line issues and extent of private residential overhang)
  - ii) Road side (variance is dependent on traffic and/or sight line issues)
    - Edge of carriage way (non-arterial) – 2.5m to 3m
    - Edge of carriage way (arterial) – 5m
    - Centre of road (non-arterial) – 5m

## Tree Management Policy

### 2.4. *Tree Watering*

- a. Council will ensure summer watering for the first four years of the street trees it has planted, or as required; and residents are also encouraged to water street trees. Council will consider water sensitive urban design installations in the planting of street trees, to maximise the opportunity for tree health and to minimise impacts on infrastructure.
- b. Street trees planted by residents will not be watered by Council.
- c. Trees in open spaces are watered in summer by the reserve irrigation (if installed) or via manual processes. Trees will be monitored appropriately to ensure they are receiving enough water during the first four years, or as required.

### 2.5. *Removal of Trees - General*

- a. All requests for removal must be in writing and will be assessed by, or by a person nominated by, the General Manager, City Assets. Retention of the tree is the first priority when undertaking the assessment.
- b. Trees that are healthy and structurally sound will not be removed for the following reasons:
  - i) The tree obscures or potentially obscures views (other than traffic and pedestrian sight lines)
  - ii) The tree variety is disliked
  - iii) The tree variety causes nuisance by way of leaf, fruit or bark shedding or the like
  - iv) The tree provides habitat to wildlife that causes nuisance by way of droppings, tree litter and the like
  - v) The tree is in the way of a non-essential crossover or verge paving option
  - vi) The tree shades private gardens, solar hot water installations and the like.
- c. Removal will not be considered for any tree on the grounds that it is lifting up infrastructure around it. Council continually aim to pro-actively eliminate trip hazards acting upon the worst situations throughout the City of Holdfast Bay as a priority.
- d. The General Manager, City Assets or his nominated representative has delegated authority to effect the removal of street trees which are:
  - i) dead, dying, diseased, and/or structurally unsound,
  - ii) a non-complying species, or
  - iii) designated as weed/nuisance species by the South Australian Government, even if healthy and structurally soundRemoval in these circumstances will be at Council expense.
- e. The General Manager, City Assets or his nominated representative has delegated authority to effect the removal of street trees which are required for access for essential and emergency services. Removal and offset replacement in these circumstances will be at the applicant's expense, as outlined below.
- f. Residents are not authorised to remove trees from Council property. Council will use relevant provisions of the *Local Government Act 1999*, specifically section 221, to protect the value of its urban forest where trees have been vandalised or removed without Council authority.
- g. All relevant legislation from the impacts of development on trees will be used by Council to protect its street tree population.

## Tree Management Policy

### 2.6. **Removal of trees which are not Regulated or Significant trees for development**

- a. All requests for the removal of a complying species street tree which is considered structurally sound and healthy will be referred to Council for a decision.
  - i) If removal of a healthy and structurally sound street tree is agreed by Council, the applicant shall be invoiced for the following costs:
    - removal of the tree and two replacement street trees as nominated in Council's Street Tree Strategy Planting Guide, based on Council's approved Schedule of Fees and Charges for the applicable year, and;
    - the lost amenity value of the tree based on the Revised Burnley Method of Tree Valuation.
  - ii) Replacement trees will be sourced and planted by field staff. Replacement trees will be planted in a future planting season.
- b. Trees can only be removed for development if the tree has a low useful life expectancy and/or has low amenity value. This will be determined by the General Manager, City Assets or his nominated representative.
- c. All other possible designs are to be considered before tree removal is an option.

### 2.7. **Removal of trees which are Regulated or Significant trees**

- a. All requests for removal or non-maintenance pruning of a healthy and structurally sound Regulated or Significant tree, where the removal or pruning amounts to "tree-damaging activity" in accordance with the *Development Act 1993* and *Development Regulations 2008* must be accompanied by a report from a qualified professional (i.e. an Arborist).
- b. All requests for the removal of a complying street tree species which is considered structurally sound and healthy will be referred to Council for a decision.
- c. If Council agrees that the removal of such a tree is warranted, a Development Application will be submitted and assessed under the *Development Act 1993* with its associated processes for public consultation, appeal and decision notification.

### 2.8. **Replacement of Regulated and Significant Trees**

- a. If a Regulated tree is removed by Council because it is no longer structurally sound, Council will, in accordance with the *Development Act 1993*, plant two trees with the potential to become significant at a nearby reserve, or replace the street tree and plant one tree with the potential to become significant at a nearby reserve.
- b. If a Significant street tree is removed by Council because it is no longer structurally sound, Council will, in accordance with the *Development Act 1993*, plant three trees with the potential to become significant at a nearby reserve, or replace the tree and plant two trees with the potential to become significant at a nearby reserve.



## Tree Management Policy

### 2.9. *Construction Works - General*

- a. Council contractors undertaking construction works that may affect Council trees are required to follow the guidelines for work contained in Appendix 2 of this policy.

### 2.10. *Kerb and Watertable Infrastructure (KWT)*

- a. Where trees may be impacting on footpaths or kerb & watertable (KWT) infrastructure, different treatment options will be considered to minimise the damage impact to street trees, including the use of rubber or cement treated rubble.

### 2.11. *Construction Works - Crossovers*

- a. In the event of a street tree being required to be removed (subject to any approvals required under the *Development Act 1993*) to facilitate entry to a new or redeveloped property, the applicant shall be invoiced for the following costs:
  - i) removal of the tree and two replacement street trees as nominated in Council's Street Tree Strategy Planting Guide, based on Council's approved Schedule of Fees and Charges for the applicable year, and
  - ii) the lost amenity value of the tree based on the Revised Burnley Method of Tree Valuation
- b. Replacement trees will be sourced and planted by depot staff. Replacement trees will be planted in a future planting season.

### 3. REFERENCES

#### 3.1 *Legislation*

- a. *Local Government Act 1999*
- b. *Development Act 1993*
- c. *Development (Regulated Trees) Amendment Act 2009*
- d. *Development (Regulated Trees) Variation Regulations 2011*

#### 3.2 *Other References*

- a. City of Holdfast Bay Street Tree Strategy and Planting Guide
- b. City of Holdfast Bay Strategic Plan
- c. City of Holdfast Bay Development Plan
- d. City of Holdfast Bay Open Space and Public Realm Strategy
- e. AS 4373—2007

## Appendix 1: Street Tree Spacing Requirements

### Clearances

Infrastructure	Clearance Required
Corners	5m
Crossovers	3m
Stobie Poles	3m
Underground services pits	2m from edge
Storm water inlet	2m from edge
Stop, Give Way & Speed Signs	5m (front) or 2m (behind)
Other Signs	2m

- Trees must be planted central to verge. If there are to be multiple trees on verge, the tree must be the distance of its potential canopy spread of the selected tree species to prevent entanglement of canopies when trees reach maturity.

### Verges

Verge Width	Approximate Tree Height
Up to 1m	Do not plant
1-2m	Small Tree at 5 -7m
2-3m	Medium Tree 7-10m
3m +	Large Tree 10-13m

### Holes

- Hole depth must be no greater than 300mm.

## Tree Management Policy

### Appendix 2: Guidelines for Contractors

- Construction works occurring in the vicinity of large trees, particularly Norfolk Island Pines, will not be undertaken where it is likely to damage or interfere with any part of the tree including roots without consulting with the General Manager, City Assets or his nominated representative.
- No root shall be severed closer than three metres from the base of any tree before consideration has been given to:
  - Accepting minor variations in line and level of pavement, kerbing, gutter and drainage or service system,
  - The use of permeable or replaceable surfaces, including gravel, rubble or similar around the base of the tree
  - Use of infiltration or soakage holes for minor drainage problems – with due regard to potential pollutants.
- Where root pruning is deemed necessary, work will be done under the supervision of the General Manager, City Assets or his nominated representative, generally the Manager Works & Environmental Services. In the event of any dispute, professional advice will be obtained from a qualified arborist or suitably experienced person.
- All works in the vicinity of trees shall take into account:
  - Provision of permeable surfaces up to 3 metres in diameter from the base of trees,
  - Provision of infiltration points for all trees surrounded by hard surfacing,
  - Directing run-off to the trees root zone rather than underground drainage systems.
- Any construction work or designs that are unable to meet the above criteria will not be approved, without consultation with the General Manager, City Assets. In the event of any dispute, an independent opinion shall be sought as stated above or by a report to Council for decision.
- All excavations around trees, including by Contractors, on trees larger than 10 metres will be inspected by an appropriate officer from Works & Environmental Services to consider alternate methods such as:
  - modifying design of KWT, or
  - not installing KWT in this section of road.



Specifications for the root barrier installation at 10A-10C Augusta Street:

A continuous length of 600mm deep root barrier to be installed to run east/west within the property of 10 Augusta Street. Root barrier is to be positioned against the foundations of dwellings 10a, 10b and 10c covering a 30 metre zone as indicated:

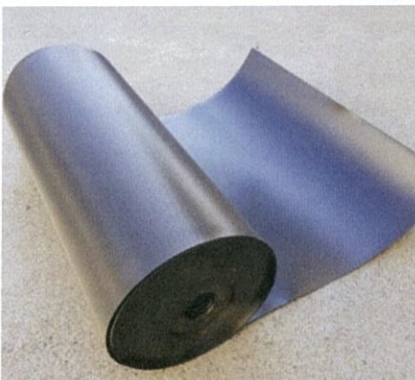




Any services encountered throughout root barrier installation will require the approach of delineation where possible and puzzle cutting to otherwise accommodate best possible fit and seal from tree root activity to dwellings.

Tree roots detected throughout excavation are to be neatly pruned with sharp handsaw. Should any roots greater than 30mm in diameter be detected throughout excavation of trench, Council's Arborist is to be contacted.

Note: Approximately 3.5m worth of concrete (two footpaths and one driveway) will require cutting and reinstatement to allow for a continuous trench/application of root barrier.



**ROOT BARRIER 600MM X 30M  
ROLL**

**BEN HALL**

Technical Officer Arboriculture, Mobile 0400 935 557, Email [bhall@holdfast.sa.gov.au](mailto:bhall@holdfast.sa.gov.au)

# Attachment 6



**From:** Howard Lacy  
**Sent:** Monday, 23 September 2019 2:11 PM  
**To:** Rebecca Abley <[RAbley@holdfast.sa.gov.au](mailto:RAbley@holdfast.sa.gov.au)>  
**Cc:** DL Elected Members and Senior Leadership Team  
<[ElectedMembersandSeniorLeadershipTeam@holdfast.sa.gov.au](mailto:ElectedMembersandSeniorLeadershipTeam@holdfast.sa.gov.au)>; Ben Hall  
<[BHall@holdfast.sa.gov.au](mailto:BHall@holdfast.sa.gov.au)>; Ross Whitfield <[RWhitfield@holdfast.sa.gov.au](mailto:RWhitfield@holdfast.sa.gov.au)>  
**Subject:** RE: 10a Augusta Street

Hi Rebecca,

Thanks for your email. This is indeed a complex one. As an insurance claim has now been lodged, the matter is now technically in the hands of our insurers and so all correspondence and dealings with the residents/body corporate should be dealt with through them.

So from this viewpoint, I would appreciate if no further contact is made directly with the resident/body corporate. Our insurers will handle all contact.

If other Councillors could also note this please.

By way of background. Council has the prerogative to remove this significant, historic tree which will resolve the matter. As Administration, we have been trying to work with the resident to avoid full tree removal. Our arborist Ben Hall has been on site a few times to assess the tree which, whilst quite old, is still healthy and has reasonable remaining life. It is a significant River Red Gum and is historic in that it would be one of the original trees native to the area. It is also a notable feature in the area – so really valuable from that perspective.

Because of the nature of the root structure, we are unable to install a root barrier in the verge and so we proposed that a root barrier be installed within the front yard of the unit. This was because if we cut the roots in the verge to install the barrier, it would have made the tree unstable and/or damage the trees primary means of survival. Putting the root barrier in front of the front wall of the unit would potentially protect it if roots were the issue.

Council enjoys a protection under the Local Government Act s245 (reproduced below) for liability from damage caused by trees planted in a roadway (which includes verges), but only in so far as we have to take reasonable action to avert a risk of damage to property act if a landowner makes a written request for Council to take reasonable action.

245—Liability for injury, damage or loss caused by certain trees

- (1) A council is not liable for any damage to property which results from—
  - (a) the planting of a tree in a road; or
  - (b) the existence of a tree growing in a road (whether planted by the council or not).
- (2) However, if—
  - (a) the owner or occupier of property adjacent to the road has made a written request to the council to take reasonable action to avert a risk of damage to property of the owner or occupier from the tree; and
  - (b) the council has failed to take reasonable action in response to the request, the council may be liable for any damage to property that would have been averted if the council had taken reasonable action in response to the request.



In this case, we believed that a reasonable action was to provide a root barrier in front of the building (but not in the verge for reasons described earlier). In doing so, our insurers have advised us that we are going above and beyond what is required, but we took a view that our planned action was “reasonable”. In proposing the installation of a root barrier to the resident/body corporate, we needed to do so as an “Act of Grace” arrangement – in other words without admission of liability – and for the work to be undertaken by a contractor, not council staff. This was the basis of our offer to the resident/body corporate.

We were not aware that they are having any trouble finding a contractor.

Hope this assists in understanding where we are at. In summary:

- We have tried to determine a reasonable course of action, short of removing the tree.
- We sought advice from our insurers (Local Government Risk Services) who advised us that we did not need to undertake any works or accept any liability.
- We decided to offer a root barrier installation as an Act of Grace arrangement.
- The matter now appears to have converted to a full insurance claims, so we cease direct negotiations with the landowner/body corporate and let our insurers handle it from here.
- It is still within Council’s prerogative to lodge a DA to remove a significant, historic tree if that is Council’s wish. A Member would need to lodge a Motion on Notice to get a decision from Council, and if approved, Administration would proceed from there.

Regards



**HOWARD LACY**

**General Manager City Assets & Services**

City of Holdfast Bay

08 8229 9940

0417 861 826

[hlacy@holdfast.sa.gov.au](mailto:hlacy@holdfast.sa.gov.au)

[holdfast.sa.gov.au](http://holdfast.sa.gov.au)



Brighton Civic Centre

24 Jetty Road, Brighton SA 5048

**18.2 Request to remove significant tree in front of 10A Augusta Street, Glenelg (Report No: 347/21)****Motion – Exclusion of the Public – Section 90(3)(i) Order****C091121/2475**

- 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.**

Moved Councillor Bradshaw, Seconded Councillor Clancy

**Carried Unanimously**

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.

Councillor Lonie re-joined the meeting 8.40pm

**Motion**

**That Council 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.**

**Adjournment****C091121/2476**

**That the report be adjourned until the next Council meeting to allow for clarification to be sought from the Strata Corporation on their view on the removal of the tree.**

Moved Councillor Bradshaw, Seconded Councillor Miller

**Carried Unanimously**

**RETAIN IN CONFIDENCE - Section 91(7) Order****C091121/2477**

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.

Moved Councillor Lindop, Seconded Councillor Miller

**Carried Unanimously**

CONFIRMED

23 November 2021

MAYOR