

# Special Council Assessment Panel Minutes

**15 August 2023**

## **Our Vision**

*A City which values its heritage, cultural diversity,  
sense of place and natural environment.*

*A progressive City which is prosperous, sustainable  
and socially cohesive, with a strong community spirit.*

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City of Norwood Payneham & St Peters  
175 The Parade, Norwood SA 5067

Telephone 8366 4555  
Email [townhall@npsp.sa.gov.au](mailto:townhall@npsp.sa.gov.au)  
Website [www.npsp.sa.gov.au](http://www.npsp.sa.gov.au)  
Socials [f /cityofnpsp](https://www.facebook.com/cityofnpsp) [@cityofnpsp](https://www.instagram.com/cityofnpsp)



City of  
Norwood  
Payneham  
& St Peters

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**VENUE**                      Torrens Room, Payneham Library

**HOUR**                        **7:00pm**

**PRESENT**

**Panel Members**        Mr Terry Mosel  
                                 Mr Mark Adcock  
                                 Mr Ross Bateup  
                                 Ms Jenny Newman  
                                 Cr Christel Mex

**Staff**                        Geoff Parsons, Manager Development Assessment  
                                 Carlos Buzzetti, General Manager, Urban Planning & Environment  
                                 Tala Aslat, Planning Assistant

**APOLOGIES**

**ABSENT**

1.        **COMMENCEMENT AND WELCOME**
  
2.        **APOLOGIES**
  
3.        **CONFIRMATION OF THE MINUTES OF THE MEETING OF THE COUNCIL ASSESSMENT  
                                 PANEL HELD ON 17 JULY 2023**  
  
                                 **Moved by Mr Adcock and Seconded by Mr Bateup**  
                                 **CARRIED**
  
4.        **DECLARATION OF INTERESTS**
  
5.        **DEVELOPMENT APPLICATIONS – PDI ACT**
  
6.        **DEVELOPMENT APPLICATIONS – DEVELOPMENT ACT**

**7. REVIEW OF ASSESSMENT MANAGER DECISIONS**

**7.1 REVIEW OF ASSESSMENT MANAGER'S DECISION – DEVELOPMENT NUMBER  
23010962 – DITARA PTY LTD – 1 KENSINGTON ROAD, NORWOOD & 37-39 CLARKE  
ST, NORWOOD**

<b>DEVELOPMENT NO.:</b>	23010962
<b>APPLICANT:</b>	Ditara Pty Ltd
<b>ADDRESS:</b>	1 Kensington Road, NORWOOD SA 5067 37-39 Clarke Street, NORWOOD SA 5067
<b>NATURE OF DEVELOPMENT:</b>	Removal of a significant River Red Gum tree
<b>ZONING INFORMATION:</b>	<b>Zones:</b> - Suburban Business <b>Overlays:</b> - Prescribed Wells Area - Regulated and Significant Tree - Traffic Generating Development - Airport Building Heights (Regulated) - Future Road Widening - Hazards (Flooding - General) - Major Urban Transport Routes - State Heritage Place - Heritage Adjacency <b>Technical Numeric Variations (TNVs):</b> - Maximum Building Height (Levels) (Maximum building height is 2 levels)
<b>LODGEMENT DATE:</b>	21 April 2023
<b>RELEVANT AUTHORITY:</b>	Assessment panel / Assessment manager at City of Norwood, Payneham and St. Peters
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	21 April 2023
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	No
<b>RECOMMENDING OFFICER:</b>	Geoff Parsons Manager Development Assessment / Assessment Manager
<b>REFERRALS STATUTORY:</b>	None applicable
<b>REFERRALS NON-STATUTORY:</b>	Matt Cole City Arborist

**CONTENTS:**

<b>ATTACHMENT 1: Council Assessment Panel Review of Decisions of the Assessment Manager Policy</b>	<b>ATTACHMENT 5: Application Documentation – DA 23010962</b>
<b>ATTACHMENT 2: Application to Assessment Panel and accompanying correspondence</b>	<b>ATTACHMENT 6: ERDC Judgement – 19-2022</b>
<b>ATTACHMENT 3: Decision Notification Form – DA 22030882</b>	<b>ATTACHMENT 7: PD Code Rules Applicable at Lodgement</b>
<b>ATTACHMENT 4: Delegated Assessment Report – DA 23010962</b>	

**INTRODUCTION**

Section 202(1)(b)(I)(A) of the *Planning, Development and Infrastructure Act 2016* provides an applicant with a right to apply to the Council Assessment Panel for a review of the Assessment Manager's decision relating to a prescribed matter.

A prescribed matter is defined as follows:

**Prescribed matter**, in relation to an application for a development authorisation, means -

- (a) any assessment, request, decision, direction or act of a relevant authority under this Act that is relevant to any aspect of the determination of the application; or
- (b) A decision to refuse to grant the authorisation; or
- (c) The imposition of conditions in relation to the authorisation; or
- (d) Subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of a relevant authority under this Act in relation to the authorisation.

To assist with undertaking a review under Sections 201-203 of the *Planning, Development & Infrastructure Act 2016*, the Council Assessment Panel adopted a procedure to guide the consideration of an application for such at its meeting held on 10 February 2021. A copy of that Policy is provided in **Attachment 1**.

It is noted that the attached Policy was due for review in February 2023. A review of the Council Assessment Panel Terms of Reference and Meeting Procedures has been completed. The review of the attached Policy will commence shortly.

The Panel should also be aware that the South Australian Government made changes to the *Planning, Development & Infrastructure (General) Regulations 2017* on 25 May 2023. An amended regulation was introduced which states:

*(2) An applicant to an assessment panel for a review of a prescribed matter must be given an opportunity to provide the assessment panel with the applicant's submissions in relation to the review (and, if the assessment panel determines to hold a hearing, must be given written notice of the date of the hearing and an opportunity to appear and make submissions at the hearing in person)*

Council (together with the rest of the local government sector) has received advice in relation to the new regulation and such advice confirms that an Applicant should be provided with the right to make submissions (both written and verbal). Accordingly, the Applicant's written submission has been provided in **Attachment 2** (together with the request for the review) and the Presiding Member and Assessment Manager have agreed it is reasonable for both the Applicant and Assessment Manager to address the Panel verbally for five (5) minutes each, as per the Panel's normal processes for a hearing of representations.

## PROPOSAL

The Application to which the review relates is Development Application 23010962. This Application sought Planning Consent to remove a significant tree. Specifically, the nature of development was described as:

*Removal of a significant River Reg Gum tree*

Development Application 23010962 was refused Planning Consent under delegation from the Assessment Manager. It is that determination that is the subject of this review.

Clause 6 in the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy* stipulates that the Panel may:

- Affirm the Assessment Manager's decision on the Prescribed Matter;
- Vary the Assessment Manager's decision on the Prescribed Matter; or
- Set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.

In addition, the Council Assessment Panel may defer its decision in accordance with clauses 5.6 and 5.7 of the *Council Assessment Panel Review of the Assessment Manager Policy*.

Draft resolutions for each option have been included at the appropriate point within this report.

Panel Members should familiarise themselves with Clause 5 in the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy* which provides guidance on how the review hearing should be conducted, in particular clause 5.1 which states:

*5.1 On review, the CAP will consider the Prescribed Matter afresh.*

## BACKGROUND

The matter has an extensive history, and has been the subject of previous Applications and Environment Resources and Development Court decisions.

Prior to this current Application (i.e. DA 23010962) being lodged and determined, the most recent prior Application was that described as Development Application 21037327 which similarly sought Development Approval for the removal of the subject tree. That Application was refused on 22 December 2021. The reason for refusal was described as:

*The tree displays attributes worthy of retention against Performance Outcome 1.2, and does not present a level of risk which satisfies Performance Outcome 1.3 (a) (ii) or (b) of the Regulated and Significant Tree Overlay to warrant its removal.*

That decision was appealed to the Environment Resources and Development Court. On 21 December 2022 the Court delivered its judgement finding in favour of the Assessment Manager of the City of Norwood Payneham and St Peters. The key findings of the Court were:

### **Findings**

*56 We find:*

- *the tree is a significant tree that warrants protection as that it makes an important contribution to the character and amenity of the local area and forms a notable visual element to the landscape of the local area;*
- *the tree poses an unacceptable risk to public and private safety due to limb drop;*
- *pruning is a reasonable remedial treatment, and the appellant has not demonstrated that would be ineffective; and*
- *the tree does not warrant removal in the first instance.*

Following the judgement, the Applicant advised they would carry out the pruning works as outlined in the evidence given by Mr Selway (the Council's Consultant Arborist) during the appeal.

The pruning works were carried out 2 February 2023 under the supervision of Mr Selway.

Following the works, on 18 February 2023, a limb / branch fell from the tree, narrowly missing a car and driver. This additional limb drop has resulted in the applicant wishing to revisit the previous decisions, and again seek approval for removal of the tree. Accordingly, DA 23010962 was lodged.

## DOCUMENTS FOR REVIEW

In accordance with clause 4 of the *Council Assessment Panel Review of Decisions of the Assessment Manager* a number of different materials have been included as attachments to this agenda, as follows:

- Attachment 1 – Council Assessment Panel Review of Decisions of the Assessment Manager Policy
- Attachment 2 – Application to Assessment Panel and accompanying correspondence
- Attachment 3 – Decision Notification Form – DA 23010962
- Attachment 4 – Delegated Assessment Report – DA 23010962
- Attachment 5 – Application Documentation – DA 23010962
- Attachment 6 – Environment Resources and Development Court Judgement
- Attachment 7 – PD Code Rules Applicable at Lodgement

While it could be argued that the Environment Resources and Development Judgement is not relevant to the matter before the Panel it is respectfully submitted that it provides useful background information for the Panel about the history of the matter and the arguments both for and against the proposed development.

However, the Panel is not constrained by, and should not be influenced by, that judgement. The Panel must consider this matter afresh having regard to the information presented and the submissions that have / will be made.

## REVIEW OF ASSESSMET MANAGER DECISION

The applicant, via the correspondence provided for in **Attachment 2**, has provided a valid and clear argument as to why the decision of the Assessment Manager (namely, the refusal of DA 23010962) should be set aside.

To assist the Panel in their consideration of this matter, and in accordance with clause 4.1.3 of the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy* I have set out the rationale for the Assessment Manager's decision below.

Development Application 23010962 sought the removal of a significant tree – specifically a River Reg Gum. As per the earlier sections of this report, the same tree has previously been the subject of requests for its removal and an Environment Resources and Development Court appeal on the matter.

The Application was supported by a report by an Arborist - Dr Nicolle, and the Application was reviewed by Council's Consultant Arborist Mr Selway. Both reports form part of **Attachment 5** and both Arborists were also involved as Expert Witnesses in the recent decision of the Environment Resources and Development Court on this matter.

It is submitted that any request for the removal of a regulated or significant tree must essentially pass two (2) tests, as follows:

- First, whether the significant tree displays attributes that warrant its retention, as outlined in Performance Outcome 1.2 of the Regulated and Significant Tree Overlay:

### *PO 1.2*

*Significant trees are retained where they:*

- (a) *Make an important contribution to the character or amenity of the local area*
  - (b) *Are indigenous to the local area and are listed under the National Parks and Wildlife Act 1972 as a rare or endangered native species*
  - (c) *Represent an important habitat for native fauna*
  - (d) *Are part of a wildlife corridor or a remnant area of native vegetation*
  - (e) *Are important to the maintenance of biodiversity on the local environment*
  - And / or*
  - (f) *Form a notable visual element to the landscape of the local area.*
- Second, whether the rationale for the removal is anticipated and reasonable and essentially, unavoidable given the circumstances, in accordance with Performance Outcome 1.3 of the Regulated and Significant Tree Overlay:

### *PO 1.3*

*A tree damaging activity not in connection with other development satisfies (a) and (b):*

- (a) *tree damaging activity is only undertaken to:*
  - (i) *remove a diseased tree where its life expectancy is short*
  - (ii) *mitigate an unacceptable risk to public or private safety due to limb drop or the like*
  - (iii) *rectify or prevent extensive damage to a building of value as comprising any of the following:*

- A. a Local Heritage Place
- B. a State Heritage Place
- C. a substantial building of value

and there is no reasonable alternative to rectify or prevent such damage other than to undertake a tree damaging activity

- (iv) reduce an unacceptable hazard associated with a tree within 20m of an existing residential, tourist accommodation or other habitable building from bushfire
- (v) treat disease or otherwise in the general interests of the health of the tree and / or
- (vi) maintain the aesthetic appearance and structural integrity of the tree

(b) in relation to a significant tree, tree-damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective.

With respect to the first test, it was determined that the significant tree should be retained due primarily to its compliance with part (a), (c), (e) and (f) of Performance Outcome 1.2.

The tree is of substantial size and scale, with a trunk circumference of approximately 3.7 metres (measured at one (1) metre above the ground), a total height of approximately 24 metres and a significant canopy spread of approximately 21 metres (as noted in the Arborist Report from Dr Nicolle).

The tree is visible from all neighbouring allotments, and allotments / land further away. The tree is also visible from the surrounding public road network and is a notable figure in the landscape.

The height and width of the canopy and the overall health of the tree (which provides for extensive foliage) are important in the urban context, where built form is dominant. The presence of the tree on private land is also important, as a majority of the trees in the locality are located in the public realm, or in the parklands, a relatively short distance to the south west of the site.

In addition, both Arborists agreed that the tree formed an important habitat for local fauna, containing various hollows and sections which would support birdlife in particular.

These factors combine and lead to a conclusion that the tree does provide an important contribution to the character and amenity of the area. It is a notable visual element and its impact from a visual perspective is both impressive and important.

I note that Dr Nicolle (a qualified and highly experienced Arborist) on behalf of the applicant has suggested that tree has a *very high* biodiversity value and a *high* landscape value. These views are not disputed by Mr Selway (Council's Consultant Arborist).

Accordingly, I am satisfied that the Planning and Design Code anticipates and encourages the retention of the tree consistent with the decision previously made by the Assessment Manager.

With respect to the second test, differing professional views have been submitted by the respective Arborists (together a view from the Council's internal Arborist). The internal delegated assessment report (provided at **Attachment 4**) notes these differences (*note: the wording is that of Council's administration in a summary format – the words of the Arborists have been paraphrased*):

Policy	Dr Nicolle's view	Mr Selway's view	City Arborist's view
<b>(a) tree-damaging activity is only undertaken to:</b>			
<b>(i) remove a diseased tree where its life expectancy is short</b>	The tree is diseased by borer activity. The tree has exceeded its useful life expectancy due to an unacceptable and unmanageable risk	The tree is not diseased and has a useful life expectancy of 10-20 years Observed borer activity in the primary and secondary structure.	Did not comment on this aspect



Policy	Dr Nicolle's view	Mr Selway's view	City Arborist's view
		Noted that the hollows created by the borers were not large enough, relative to the diameter of the branch, to be considered a structural concern for the tree (pp 19-20).	
<b><i>(ii) mitigate an unacceptable risk to public or private safety due to limb drop or the like</i></b>	The tree <i>does</i> represent a moderate and marginally unacceptable, and increasing, risk to safety. This arises from the continuously increasing likelihood of branch failure events associated with over-extended and end-weighted branches, as well as structural defects within the tree.	The tree <i>does not</i> represent an unacceptable risk. Instead, Shane's assessment using the VALID tree risk-benefit system indicates an acceptable risk rating.	The tree <i>does not</i> present an unacceptable risk.
<b><i>(iii) rectify or prevent extensive damage to a building of value as comprising any of the following: A. a Local Heritage Place B. a State Heritage Place C. a substantial building of value</i></b>	N/A Although Dr Nicolle did note the damage to the carpark but did not consider this as justification alone for removal of the tree	N/A	Did not comment on this aspect.
<b><i>(iv) reduce an unacceptable hazard associated with a tree within 20m of an existing residential, tourist accommodation or other habitable building from bushfire</i></b>	N/A	N/A	N/A
<b><i>(v) treat disease or otherwise in the general interests of the health of the tree</i></b>	N/A	N/A	N/A
<b><i>(vi) maintain the aesthetic appearance and structural integrity of the tree</i></b>	N/A	N/A	N/A
<b>In relation to a significant tree, tree-damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective.</b>	<i>It is worth prefacing this part by stating that it was agreed as part of the ERD Court appeal that the following remedial options would be ineffective and/or unreasonable: an exclusion zone around the tree; an under-canopy structure; and branch cabling. Nobody's position in this respect has changed since. Accordingly, the only remedial measure to be considered is pruning of the tree.</i>		
	The pruning that took place on 2 February 2023 has not	The pruning that took place on 2 February	The pruning that has taken place

Policy	Dr Nicolle's view	Mr Selway's view	City Arborist's view
	<p>significantly reduced the likelihood of branch failure to the extent that would alter Dr Nicolle's risk rating of 'moderate and marginally unacceptable'.</p> <p>Pruning is not a viable method to reduce and maintain the risk because of:</p> <ul style="list-style-type: none"> <li>• Structurally defective branches within the canopy;</li> <li>• Over-extended and end-weighted branches;</li> <li>• Absence of internal pruning points to maintain a viable canopy; and</li> <li>• The extent of pruning required to acceptably mitigate the risk would result in the tree no longer being worthy of retention per PO 1.2, and therefore justify its removal anyway.</li> </ul>	<p>2023 <i>has been effective</i> in mitigating any risk to public or private safety. The risk rating attributed to the tree remains as acceptable, and no further remedial work is required.</p>	<p>will inevitably result in the tree taking some time to adjust to its altered form and therefore altered wind dynamics and loads. Is confident that, given time, the tree will make this adjustment and the recent small branch failure is not evidence alone that the pruning is ineffective and does not condemn the tree.</p>

The key point of argument between the parties is noted in paragraph 18 of the correspondence from Mr Hilditch (forming part of **Attachment 2**) where it is noted "*Pruning has been demonstrated to be ineffective*".

This conclusion, it is presumed, is based upon the fact that two limbs have dropped from the tree since the decision of the Environment Resources and Development Court with respect to the previous Application (DA 21037327) as follows:

- A 300mm diameter branch failure on 27 January 2023 (prior to the subsequent pruning);
- A 90mm branch failure on 18 February 2023 (post the subsequent pruning).

The Applicant and their Arborist assert:

- That the branch failures demonstrate that pruning has not been effective;
- The level of risk is at the moderate to marginally unacceptable range;
- The tree is diseased, showing substantial borer activity;
- The *useful* life expectancy of the tree is short (noting the *actual* life expectancy could be 30+ years);
- All reasonable remedial treatments have been determined to be ineffective.

The Council's Consultant Arborist and Internal Arborist suggest that:

- The level of risk is acceptable;
- The tree is not diseased (borer activity was observed but not to such an extent that it would render the structure of the tree unsafe);
- The tree has a *useful* life expectancy of 10-20 years;
- The pruning works have been effective and a 'minor' limb drop since the pruning works were carried out is to be expected given that pruning alters the wind loading experienced by the tree and the tree will need some time to adjust;
- A regular inspection and pruning regime will limit the risk.

Copies of the reports from the respective Arborists are attached and should be read in their entirety to understand the points of difference.

It is worth noting the Environment Resources and Development Court, in their judgement, did find that tree posed a moderate to unacceptable risk, but they noted that all remedial options have not been suitably explored and hence they found in favour of the Assessment Manager of the City of Norwood Payneham and St Peters.

On the presumption that the tree does pose an unacceptable risk (which as noted above is disputed) the question becomes whether all reasonable remedial treatments have been determined to be ineffective.

In consideration of all of the evidence before the Assessment Manager, it was determined that the failure of one (1) branch (measuring 90mm in diameter) since the pruning work was carried out is not sufficient to justify that the reasonable remedial measures have been ineffective. Such failures can be reasonably anticipated following pruning activities.

The differing views from the Arborists with respect to the level of disease experienced by the tree and the expected life expectancy essentially remain unchanged since the Environment Resources and Development Court appeal.

It was therefore considered that the Application had not sufficiently justified that removal is the only viable option, in accordance with Performance Outcome 1.3 of the Regulated and Significant Tree Overlay.

As the Council Assessment Panel now has before it the rationale for the review as provided by the Applicant, and justification for the decision as provided by the Assessment Manager, the Panel must now consider this matter afresh taking into consideration all relevant factors.

## CONCLUSION

This report outlines the rationale for the decision of the Assessment Manager, as required by clause 4.1.3 of the *Council Assessment Panel Review of Decisions of the Assessment Manager Policy*. The attachments provide all of the other relevant information and details as required by clause 4.1.

The Council Assessment Panel must determine whether to affirm the decision of the Assessment Manager, vary it, set it aside and substitute its own decision or defer consideration of the matter for more information.

Relevant options for the consideration of the Panel are outlined below.

## RESOLUTION OPTIONS

### Resolution to affirm the decision of the Assessment Manager

*The Council Assessment Panel resolves to affirm the decision of the Assessment Manager that Development Application 23010962 is not seriously at variance with the Planning and Design Code, but that it does not warrant Planning Consent for the following reasons:*

1. *The tree displays attributes worthy of its retention in accordance with Performance Outcome 1.2 of the Regulated and Significant Tree Overlay;*
2. *The removal of the tree is not justified by any of the criteria in Performance Outcome 1.3 of the Regulated and Significant Tree Overlay.*

### Resolution to vary a decision of the Assessment Manager

*The Council Assessment Panel resolves to vary the decision of the Assessment Manager in relation to Development Application 23010962 by including the following reasons for refusal:*

- *[insert additional / alternate reasons]*

### Resolution to set aside a decision of the Assessment Manager

*The Council Assessment Panel resolves to set aside the decision of the Assessment Manager to refuse Planning Consent to Development Application 23010962 and substitute the following decision:*

- *Development Application 23010962 is not seriously at variance with the Planning and Design Code and Planning Consent is granted to the application subject to the following conditions and notes:*

*Conditions*

- 1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).*
- 2. A minimum of three (3) replacement tree(s), in accordance with the Landscape Plan prepared by oxigen (dated 19.07.22 and marked "Revision A"), shall be planted on the subject land as soon as is practical within 12 months of the date of this Approval. The replacement trees shall not be planted within 10 metres of a dwelling or in ground swimming pool and cannot be of a species identified in Regulation 3F(4)(b) of the Planning, Development and Infrastructure (General) Regulations 2017.*
- 3. The Applicant shall plant trees and plants and install irrigation in accordance with the plan prepared by oxigen dated 19.07.22 and marked "Revision A" in the next planting season following the removal of the tree and thereafter shall maintain the new trees and plants and replace any diseased or dying plants, all to the reasonable satisfaction of the Assessment Manager for the City of Norwood Payneham and St Peters.*

*Notes*

- 1. Appeal Rights - General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.*
- 2. No work can commence on this development unless a Development Approval has been obtained. If one or more Consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.*
- 3. Consents issued for this Development Application will remain valid for the following periods of time:*
  - a. Planning Consent is valid for 24 months following the date of issue, within which time Development Approval must be obtained;*
  - b. Development Approval is valid for 24 months following the date of issue, within which time works must have substantially commenced on site;*
  - c. Works must be substantially completed within 3 years of the date on which Development Approval is issued.*

*If an extension is required to any of the above-mentioned timeframes a request can be made for an extension of time by emailing the Planning Department at [townhall@npsp.sa.gov.au](mailto:townhall@npsp.sa.gov.au). Whether or not an extension of time will be granted will be at the discretion of the relevant authority.*

- 4. The Applicant is advised that any works undertaken on Council owned land (including but not limited to works relating to crossovers, driveways, footpaths, street trees and stormwater connections) will require the approval of the Council pursuant to the Local Government Act 1999 prior to any works being undertaken. Further information may be obtained by contacting Council's Public Realm Compliance Officer on 8366 4513.*
- 5. The granting of this consent does not remove the need for the beneficiary to obtain all other consents which may be required by any other legislation.*

*The Applicant's attention is particularly drawn to the requirements of the Fences Act 1975 regarding notification of any neighbours affected by new boundary development or boundary fencing. Further information is available in the 'Fences and the Law' booklet available through the Legal Services Commission.*

6. *The Applicant is advised that the condition of the footpath, kerbing, vehicular crossing point, street tree(s) and any other Council infrastructure located adjacent to the subject land will be inspected by the Council prior to the commencement of building work and at the completion of building work. Any damage to Council infrastructure that occurs during construction must be rectified as soon as practicable and in any event, no later than four (4) weeks after substantial completion of the building work. The Council reserves its right to recover all costs associated with remedying any damage that has not been repaired in a timely manner from the appropriate person.*
7. *The Applicant is reminded of its responsibilities under the Environment Protection Act 1993, to not harm the environment. Specifically, paint, plaster, concrete, brick wastes and wash waters should not be discharged into the stormwater system, litter should be appropriately stored on site pending removal, excavation and site disturbance should be limited, entry/exit points to the site should be managed to prevent soil being carried off site by vehicles, sediment barriers should be used (particularly on sloping sites), and material stockpiles should all be placed on site and not on the footpath or public roads or reserves. Further information is available by contacting the EPA.*
8. *The Applicant is advised that construction noise is not allowed:*
  - a. *on any Sunday or public holiday; or*
  - b. *after 7pm or before 7am on any other day*

Resolution to defer review hearing

*The Council Assessment Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to refuse Planning Consent to Development Application 23010962 until:*

- *The next ordinary meeting of the Panel;*
- *The next ordinary meeting of the Panel after [insert additional information which has been requested by the Panel] is provided;*
- *Until the next ordinary meeting of the Panel after [insert date (i.e. giving an applicant 2 months to provide information)].*

Recommendations to Allow Consideration of the Matter in Confidence Following the Hearing

*That pursuant to Regulation 13(2)(a)(ix) and Regulation 13(2)(b) of the Planning Development & Infrastructure (General) Regulations 2017, together with clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager, the Council Assessment Panel orders that the public, with the exception of the Council's General Manager Urban Planning & Environment and Planning Assistant, be excluded from the meeting.*

*That the public be allowed to return to the meeting and that pursuant to Regulation 14(4) of the Planning, Development & Infrastructure (General) Regulations 2017 and clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager Policy, the discussion shall remain confidential.*

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Mr Hayes addressed the Council Assessment Panel from 7:00pm until 7:19pm  
Dr Nicolle addressed the Council Assessment Panel from 7:20pm until 7:24pm  
Mr Brunning addressed the Council Assessment Panel from 7:25pm until 7:38pm  
Mr Parsons addressed the Council Assessment Panel from 7:40pm until 7:47pm  
Mr Selway addressed the Council Assessment Panel from 7:47pm until 8:04pm

Recommendations to Allow Consideration of the Matter in Confidence Following the Hearing

*That pursuant to Regulation 13(2)(a)(ix) and Regulation 13(2)(b) of the Planning Development & Infrastructure (General) Regulations 2017, together with clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager, the Council Assessment Panel orders that the public, with the exception of the Council's General Manager Urban Planning & Environment and Planning Assistant, be excluded from the meeting.*

**Moved by Mrs Newman and Seconded by Mr Bateup  
CARRIED**

*The Council Assessment Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to refuse Planning Consent to Development Application 23010962 to enable the applicant to provide information to the Panel to demonstrate that all options, such as carpark reconfiguration, in addition to tree pruning, have been exhausted and proven to be ineffective in relation to retaining the tree.*

**CARRIED**

*That the public be allowed to return to the meeting and that pursuant to Regulation 14(4) of the Planning, Development & Infrastructure (General) Regulations 2017 and clause 5.5 of the Council Assessment Panel Review of Decisions of the Assessment Manager Policy, the discussion shall remain confidential.*

**Moved by Mrs Newman and Seconded by Mr Bateup**  
**CARRIED**

8. **ERD COURT APPEALS**

9. **OTHER BUSINESS**  
Nil

10. **CONFIDENTIAL REPORTS**

11. **CLOSURE**

The Presiding Member declared the meeting closed at 9:25pm

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Terry Mosel  
**PRESIDING MEMBER**

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Geoff Parsons  
**MANAGER DEVELOPMENT ASSESSMENT**