

**AGENDA ITEM:** 5.3

**To:** Development Assessment Panel (DAP) on 5 June 2017

**From:** Matt Atkinson, Acting Manager - Development Services  
(Planning Consultant from MasterPlan)

**Proposal:** Removal of a Significant Tree (River Red Gum) (DA 050/127/2017)

**Address:** 68 Albert Street, Prospect (CT 5463/154)

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**SUMMARY:**

Applicant: Anthea Drever

Planning Authority: Council

Referrals (Schedule 8): Nil

Public Notification: Category 1

Representations: Not applicable

Respondent: Not applicable

Development Plan Version: Consolidated 21 April 2016

Zone and Policy Area: Residential Zone (Policy Area A350)

Issues: Tree health, damage to property, risk to private safety

Recommendation: Approval, subject to conditions

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**ATTACHMENTS:**

Attachment 1 Development Application Form

Attachments 2-3 Locality plans

Attachments 4-34 Proposal documentation

Attachments 35-47 Arborist report

Attachments 48-49 Structural Engineers advice

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**1. EXECUTIVE SUMMARY**

- 1.1 The Applicant has lodged a Development Assessment for the removal of a significant tree (a River Red Gum) located in the rear yard of their dwelling. The tree has a trunk circumference of 2.92 metres when measured 1.0 metre above natural ground level, which would usually qualify the tree as a 'regulated tree' pursuant to Regulation 6A of the *Development Regulations 2008*. However, in this instance, the tree is listed within Table Pr/4 of the Development Plan as a significant tree.
- 1.2 The subject tree has been inspected by an independent Arborist and has been determined to be structurally sound and in good health.

- 1.3 The subject tree is causing substantial damage to the dwelling, due to fallen leaves blocking the dwelling's downpipes, which in turn is causing water to enter the roof cavity and damage the ceiling. The damage has been considered substantial by an independent Structural Engineer.
- 1.4 Remedial measures have been undertaken and/or investigated and proven to be ineffective, including gutter guards, ongoing maintenance, pruning of the tree and the establishment of a root barrier. There is evidence of ongoing remediation measures over the past five (5) years at a significant cost to the owners of the land.
- 1.5 The subject tree meets one of the criteria contained in Council Wide PDC 349 which would justify its removal. Specifically, the tree is causing substantial damage to a substantial building of value and all other reasonable remedial treatments and measures have been determined to be ineffective. As such, Development Approval is warranted.

## **2. LOCALITY AND SUBJECT LAND**

### **2.1 Locality**

- 2.1.1 The locality comprises an area of approximately 100m in radius extending from the subject tree. The locality is defined by the extent of visibility of the subject tree within the local area.
- 2.1.2 The locality is residential in nature and is characterised predominantly by single storey detached dwellings on generous allotments. Street tree plantings within Albert Street are mature and offer a high degree of character and amenity to the streetscape.
- 2.1.3 The broader locality, indicating the location of the subject land within the relevant Zone and Policy Area, as described in Council's Development Plan, is illustrated in **Attachments 2 and 3**.

### **2.2 Subject Land**

- 2.2.1 The subject land is located on northern side of Albert Street, approximately 250m east of Churchill Road, adjacent to the intersection with Edinburgh Street in Prospect. The land comprises one allotment with a total area of 695m<sup>2</sup>, with a frontage of 15.3m to Hillsdale Street and a depth of 45.4m.
- 2.2.2 The subject tree is located within the rear yard, approximately 7 metres from the rear boundary and 2.1 metres from the eastern side boundary of the land. The trunk of the subject tree is located approximately 7.6 metres from the dwelling.
- 2.2.3 Existing site improvements include a single-storey detached dwelling, with a shed located in the north-eastern rear corner.

## **3. PROPOSAL**

- 3.1 The proposal comprises the total removal of an existing significant River Red Gum tree.
- 3.2 No other works are proposed.
- 3.3 Supporting documentation from the applicant has been provided (refer **Attachments 4-34**). The supporting documentation includes:
  - 3.3.1 Photographic evidence of ongoing damage to the dwelling and alfresco area, allegedly caused by the subject tree;

- 3.3.2 A list of remedial actions that have been undertaken to prevent further damage to the dwelling and alfresco area; and
- 3.3.3 An itemised list of the cost of maintenance work undertaken on the dwelling to date and the estimated cost of future works if the tree is not removed.

#### 4. **REFERRALS**

##### 4.1 **Internal (Advisory) Referrals**

4.1.1 The Application was referred to an independent arborist for assessment (refer **Attachments 35-47**). Briefly, the comments identified the following:

- 4.1.1.1 The subject tree possesses attributes worthy of protection, specifically the tree provides a high level of amenity and forms a notable visual element within the local area;
- 4.1.1.2 The tree's health and structure is good, with no notable defects that would justify its removal;
- 4.1.1.3 Damage to the ceiling of the alfresco area and garage was observed. A structural engineer should be engaged to determine whether the damage is substantial and if reasonable measures can be implemented to prevent further damage;
- 4.1.1.4 It is therefore recommended that the tree should not be removed, unless a structural engineer can confirm that the damage to the dwelling is being caused by the tree and that no other reasonable remedial measures are available.

4.1.2 Following the above advice from the consultant arborist, and as damage to the dwelling was cited as the main reason for the removal of the subject tree, the Application was referred to a structural engineer (refer **Attachments 48-49**). A summary of the comments received is set out below:

- 4.1.2.1 The damage being caused to the dwelling is associated with leaves from the subject tree blocking the downpipes, which in turn is causing roof run-off to overflow into the ceiling space of the garage and alfresco area;
- 4.1.2.2 A root barrier has been installed by the owners and there is no evidence that the subject tree's roots are causing any structural damage to the dwelling;
- 4.1.2.3 The entering of stormwater into the ceiling space will cause the ceiling lining to eventually lose strength and fail;
- 4.1.2.4 The cost of replacing the ceiling lining, even a partial replacement, every few years would be substantial and it therefore considered to be substantial damage;
- 4.1.2.5 In terms of remedial treatments, gutter guards have been investigated and determined not to be effective with a flat roof and box gutter. An overflow has been installed by the owner at the rain head to the box gutter, however during a storm event overflow will almost certainly exceed the box gutter capacity resulting in water entering the ceiling;
- 4.1.2.6 The only remaining remedial treatment is regularly clearing the roof of leaf litter, which would likely be required on a weekly basis. It is questionable as to whether this is a reasonable requirement.

#### 4.2 **External (Legislated) Referrals**

4.2.1 No statutory referrals were undertaken.

### 5. **PUBLIC NOTIFICATION**

5.1 The application is a Category 1 form of development pursuant to Section 38 of the *Development Act 1993*, Schedule 9 of the *Development Regulations 2008* and the relevant provisions of the Council's Development Plan, as it involves the removal of a significant tree on private land.

### 6. **PLANNING COMMENTARY**

6.1 The proposed development is neither a complying nor a non-complying form of development within the Residential Zone (Principle of Development Control 13). The proposal is therefore to be considered on its merits against the relevant provisions of Council's Development Plan.

6.2 The tree that is the subject of this development application is identified as a Significant Tree in Table Pr/4 of the Prospect (City) Development Plan. Consequently, the application is to be assessed against the provisions of the Development Plan relevant to significant trees, despite the trunk circumference (2.92 metres) being consistent with that of a regulated tree, as defined in Regulation 6A of the *Development Regulations 2008*.

6.3 If removal of the subject tree is supported, the Council must apply a condition(s) in accordance with the following requirements under Section 42 (4) of the *Development Act 1993*:

- For every significant tree that is removed, 3 trees must be planted and maintained thereafter.
- For every regulated tree that is removed, 2 trees must be planted and maintained thereafter.
- The replacement trees cannot be within 10m of an existing dwelling or swimming pool.
- The replacement trees must not be an exempt species.
- If replacement trees are not able to be provided, then a payment of \$85.50 per tree (or 33.3% of this amount if the owner of the land is a pensioner) must be paid to the Planning and Development Fund.

6.4 Pursuant to Section 35(2) of the *Development Act 1993*, a development that is assessed by the Council as being seriously at variance with the Development Plan must not be granted consent. To this end, the Panel must determine whether the proposal is seriously at variance with the Development Plan prior to making a decision on the application.

### 7. **PLANNING ASSESSMENT**

7.1 The provisions of the Council's Development Plan anticipate the preservation of significant trees which provide "important aesthetic and environmental benefits". What is considered to be an "important aesthetic and environment benefit" is defined within Council Wide PDC 346, as follows:

Where a significant tree:

- a) makes an important contribution to the character or amenity of the local area; or

- b) is indigenous to the local area and its species is listed under the National Parks and Wildlife Act as a rare or endangered native species; or
- c) represents an important habitat for native fauna; or
- d) is part of a wildlife corridor or a remnant area of native vegetation; or
- e) is important to the maintenance of biodiversity in the local environment; or
- f) forms a notable visual element to the landscape of the local area.

7.2 The subject tree has a height of approximately 20 metres and is notably visible from about 100 metres away, despite being located within the rear yard of a dwelling. The tree is a prominent feature on the subject land and within the locality due to its height and large crown. It is also noted that the tree is a local indigenous native species and is important to the maintenance of biodiversity given its species and maturity.

7.3 Whilst the subject tree has a trunk circumference of 2.92 metres, which would usually define the tree as a regulated tree, pursuant to Regulation 6A of the Development Regulations 2008, the tree is listed within Table Pr/4 of the Council's Development Plan as a significant tree.

7.4 The incorporation of the tree in the Significant Tree List (Table Pr/4) in the Development Plan reinforces the view that the tree is worthy of preservation. Given that the subject tree satisfies at least one of the criteria listed in Council Wide PDC 346, it is desirable that the tree be preserved and tree-damaging activity avoided, if possible.

7.5 Circumstances where the removal of a significant tree is appropriate are listed within Council Wide PDC 349, which states:

Significant Trees should be preserved and tree-damaging activity should not be undertaken unless:

(a) In the case of tree removal;

- (i) the tree is diseased and its life expectancy is short; or
- (ii) the tree represents an unacceptable risk to public or private safety; or
- (iii) the tree is within 20 metres of a residential, tourist accommodation or habitable building and is a bushfire hazard within a Bushfire Prone Area; or
- (iv) the tree is shown to be causing or threatening to cause substantial damage to a substantial building or structure of value; and
- (v) all other reasonable remedial treatments and measures have been determined to be ineffective.

7.6 The Applicant has submitted the proposal on the basis that the tree is shown to be causing substantial damage to a substantial building or structure of value. There is no suggestion, nor evidence, that the tree meets any of the other removal criteria;

7.7 The Application was referred by Council staff to an independent Arborist, Mr Sam Cassar of Symatree, to provide a report on the health and structure of the tree. Mr Cassar concluded that the tree is in good health with no obvious structural flaws. He did note that there was visual evidence of damage to the dwelling that may have been caused by falling leaves blocking downpipes and suggested that a structural engineer be engaged to determine the extent of the damage.

- 7.8 The Application was subsequently referred to a structural engineer, Mr David Nash of Tonkin Consulting, for his review. Mr Nash advised that the subject tree and its root system were not causing any structural damage to the dwelling (or any other building of value). He did, however, note that the blocking of downpipes associated with falling leaves from the subject tree would ultimately cause what he considered to be substantial damage to the dwelling, if not appropriately managed.
- 7.9 The damage that Mr Nash referred to included roof run-off entering the ceiling of the dwelling, which would ultimately lead to the ceiling collapsing. It is noted that the Applicant has provided photographic evidence of the damage caused by water within the ceiling.
- 7.10 The dwelling on the subject land, including the large alfresco area, is considered to be a substantial building and structure of value, as described in Council Wide PDC 349.
- 7.11 It is therefore appropriate to determine whether the subject tree is the cause of the damage to the dwelling and if there are any remedial treatments that could be undertaken to prevent damage to the dwelling.
- 7.12 The fallen leaves that are causing the dwelling's downpipes to block are clearly from the subject tree. There are no other mature trees in the vicinity that could drop leaves onto this section of the dwelling's roof. Therefore, the subject tree is the predominant reason why damage is occurring to the dwelling.
- 7.13 In respect to remedial measures, there are several approaches that could potentially resolve the issue. Some measures relate to building alterations measures such as gutter guards and/or ongoing regular cleaning of leaf litter from the gutters. The other measures involve further pruning of the tree to increase the separation of the tree from the dwelling. These measures are investigated below.
- 7.14 The section of affected roof is effectively flat and contains box gutters. The Applicant has submitted that they received advice that gutter guards are not an effective solution in these circumstances. A gutter guard can physically be installed, however due to the near flat nature of the roof and the design of the box gutter, leaf litter will continue to collect above the gutter guard which will result in water entering the ceiling of the dwelling. This has been confirmed by the Council's consultant structural engineer.
- 7.15 The second remedial measure is one of management. The owners could undertake regular maintenance, including weekly clearing of leaf litter from the gutters. The Council's structural engineer has advised that this would need to occur on a weekly basis in order to ensure that there is no ongoing risk to the dwelling. This frequency of maintenance could be seen as unreasonable within a residential context.
- 7.16 The third and perhaps most appropriate remedial measure to enable the retention of the subject tree is to undertake further pruning of the tree, to increase the physical separation of the tree from the dwelling such that less leaf litter ends up on the dwelling's roof. The Council's consultant arborist has recommended that further pruning could be undertaken and has provided an illustration of the recommended pruning on page 8 of his report, contained in **Attachment 42**.
- 7.17 The final remedial measure is the removal of the tree, which should only be considered if the Panel is of the view that all other remedial measures are proven to be ineffective.
- 7.18 It is important to note that the Applicant applied for the removal of the subject tree in 2013 (DA 050/111/2013). At that time, the Council was not satisfied that all other remedial measures had been explored and encouraged the Applicant to amend their application to enable pruning and the installation of a root barrier. The Applicant agreed

to pursue the alternative remedial measures to try and resolve the damage that was occurring to the dwelling, to enable the retention of the tree.

- 7.19 The Applicant subsequently undertook the recommended tree pruning and installed a root barrier. Having monitored the situation for three (3) years since implementing the remedial measures, leaf litter continues to block their downpipes and has caused significant damage to the dwelling, as illustrated by the photographs provided by the Applicant in support of this Application.
- 7.20 The Applicant has also provided a timeline summary of all damage and the cost of repairs over a five (5) year period (with receipts). The timeline is provided as Table 1 within the Applicant's package of documents contained in **Attachment 6**. Copies of the receipts are contained in **Attachments 21-34**.
- 7.21 It is considered that the Applicant has made a genuine effort to explore all other reasonable remedial measures associated with the subject tree, which could prevent damage to their dwelling.
- 7.22 Whilst further maintenance pruning may improve the situation temporarily, it is not likely to resolve the issue permanently. Further ongoing pruning (Beyond that of regular maintenance pruning) would be required to manage the tree.
- 7.23 Any further pruning, beyond maintenance pruning, may also start to have an impact on the qualitative attributes of the tree. The tree underwent significant pruning in 2014 as a result of the previous Development Application and would require further pruning in the event that the Panel determines that pruning is the most appropriate solution.
- 7.24 As it stands, the canopy of the subject tree is reasonably balanced. The Council's consultant arborist notes that the crown of the tree extends from the trunk 7.0 metres north, 8.5 metres west, 6.9 metres east and only 5.1 metres south (towards the dwelling). However, if further pruning was undertaken to the southern portion of the crown, to increase the separation of the tree from the dwelling, the crown could become unbalanced, which may then necessitate the pruning of the remainder of the crown.
- 7.25 If this additional pruning was undertaken, then the subject tree may no longer meet the qualitative attributes that should be preserved, as set out in Council Wide PDC 346. Specifically, the tree may cease to be a 'notable visual element' within the landscape and the contribution to the character of the locality may be reduced.
- 7.26 There is also a 'natural justice' matter that should be considered. The City of Prospect listed significant trees within the Development Plan in June 2002 via the Significant Trees PAR (Interim). The Significant Trees PAR came in to full effect on 26 June 2003 and was consolidated into the Council's Development Plan.
- 7.27 The subject tree was listed as a Significant Tree within the Development Plan via this PAR.
- 7.28 Since then, there have been several changes to legislation regarding significant (and regulated) trees. Most recently, in January 2012, the Regulated Trees DPA (Ministerial) came into interim operation which introduced the concept of regulated trees, which are trees of a prescribed class with a trunk circumference of between 2.0 metres and 3.0 metres, when measured one metre above natural ground level. Significant trees were defined as trees of a prescribed class with a trunk circumference exceeding 3.0 metres.
- 7.29 The subject tree has a trunk circumference of 2.92 metres, when measured one metre above natural ground level, which would qualify the tree as a regulated tree in usual circumstances.

- 7.30 However, significant trees that are listed in Development Plans remain significant trees, even if their trunk circumference is less than 3.0 metres.
- 7.31 Notwithstanding, given that significant trees were listed within the Development Plan at a time where there was less specific controls regarding significant trees and when the concept of a regulated tree did not exist, it is worth comparing the assessment test for regulated trees is usual circumstances (i.e. when they are not listed as significant trees within a Development Plan).
- 7.32 The test for whether a regulated tree can be removed is less onerous than that of a significant tree. Council Wide PDC 344 sets out the circumstances where a regulated tree can be removed.
- 7.33 One of the criteria is where the tree is causing damage to a building. Unlike the corresponding removal criteria for significant trees set out in Council Wide PDC 349, the extent of damage is not qualified, nor does the building need to be substantial. Importantly, other remedial treatments are not a consideration for regulated trees.
- 7.34 Under these circumstances (i.e. if the tree was not listed in the Development Plan as a significant tree), the subject tree would warrant removal.
- 7.35 If the current regulated and significant tree criteria was in effect in 2002, it is unlikely that the Council would have undertaken the Significant Tree PAR.
- 7.36 Given the context set out above, there is merit in allowing the subject tree to be removed purely from a 'natural justice' perspective.
- 7.37 However, all applications are required to be assessed on their merit against the relevant provisions of the Development Plan. In this instance, it is the significant tree provisions that are relevant to this assessment.
- 7.38 In this regard, Council staff are satisfied that the subject tree is causing substantial damage to a building or structure of value and that all other reasonable remedial treatments have proven to be ineffective.
- 7.39 As such, it is considered that the removal of the tree is warranted.
- 7.40 Pursuant to Section 42(4) of the *Development Act 1993*, if a development authorisation provides for the removal of a regulated tree or a significant tree, the relevant authority must impose a condition requiring that a prescribed number of trees be planted and maintained to replace the tree.
- 7.41 For the purpose of this section of the Act, the *Regulations* provide that three (3) replacement trees are required for the removal of a significant tree, but they cannot be planted within 10 metres of a dwelling. Alternatively, if there is insufficient space on the subject land for the required trees, the Applicant may pay \$256.50 into the Planning and Development Fund to enable trees to be planted elsewhere.

## **8. CONCLUSION AND RECOMMENDATION**

- 8.1 The significant *Eucalyptus Camaldulensis* (River Red Gum) displays qualitative attributes that are worthy of preservation, as identified within Council Wide Principle of Development Control 346.
- 8.2 The expert structural engineering advice received supports the subject tree's removal, confirming that the tree is causing substantial damage to the dwelling through the blockage of downpipes associated with leaf litter emanating from the tree. The blockage

is causing roof run-off to enter the roof cavity, which has necessitated ongoing repairs to the ceiling.

- 8.3 The Applicant has demonstrated that all reasonable remedial treatments have proven to be ineffective over a reasonable period of time.
- 8.4 Given this, the application is therefore considered to be relatively consistent with the relevant provisions of the Prospect (City) Development Plan and warrants the granting of development approval, subject to the condition required by Section 42(4) of the *Development Act 1993*.

It is recommended:

That with reference to the relevant provisions of the Prospect (City) Development Plan, the zoning of the land within which the proposed development is situated and the locality within which the land is situated, the Panel resolves that development application 050/127/2017 is not seriously at variance with the Development Plan and, as such, a decision shall be made on the merits of the application; and

That pursuant to the *Development Act 1993*, Development Plan Consent be approved to DA 050/127/2017 by Anthea Drever, for the removal of a significant tree (River Red Gum) at 68 Albert Street, Prospect (CT 5463/154), subject to the following conditions and notes:

**Conditions:**

1. The Significant Tree approved herein for removal shall be replaced with three (3) trees, which must be planted and maintained to the satisfaction of the Council. The replacement trees cannot be of an exempt species as described in Regulation 6A(5) of the *Development Regulations 2008*, nor shall they be planted within 10 metres of an existing dwelling or swimming pool. A site plan showing the location and species of the replacement trees shall be provided to the Council. If replacement trees are not able to be provided, then a payment of \$256.50 (or 33% of this amount if the owner of the land is a pensioner) must be paid to the Planning and Development Fund.

**Advisory Notes:**

- (1) Upon granting of development approval, the development must be:
  - a) Substantially commenced within twelve (12) months from the date of the decision of this Approval, otherwise this Approval will lapse at the expiration of twelve (12) months from this date (unless Council extends this period); and
  - b) Fully completed within three (3) years from the date of the decision of this Approval, otherwise this Approval will lapse at the expiration of three (3) years from this date (unless Council extends this period) and a new development application shall be required.

Any request for an extension of the operative period of this approval must be submitted to Council in writing, accompanied by the applicable fee.

- (2) Pursuant to Section 86(1)(a) of the Development Act, 1993, you have the right of appeal to the Environment, Resources and Development Court against either 1) a refusal of consent or 2) any condition(s) which have been imposed on a consent. Any such appeal must be lodged with the Court within two (2) months from the day on which you receive this notification or such longer period as may be allowed by the Court.

The Environment, Resources and Development Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide SA 5000 (Postal Address: GPO Box 2465, Adelaide SA 5001).

- (3) At all times during the progress of removal work:
- a) Any area where it is possible that a person could be injured by falling or rebounding branches or limbs, should be fenced or barricaded to prevent people entering the area.
  - b) Clearly legible notices, warning people of the danger of removing the tree, should be affixed in places where they will be readily visible to anyone approaching the area.
  - c) Temporary structures should be provided as necessary to ensure stability of any remaining part of the tree during removal work.
  - d) There shall be no burning of the tree on the site.
  - e) Any footway, nature strip or road, is not to be obstructed or rendered inconvenient or dangerous during removal work.



City of Prospect  
 30 MAR 2017  
 Received

Attachment 1  
 -4 APR 2017  
**CITY OF PROSPECT**  
**Development Services**  
 128 Prospect Road, Prospect SA 5082  
 Telephone (08) 8269 5355 Facsimile (08) 8269 5834

## Development Application Form

Application No.: 050 / 127 / 2017 (Office Use Only)

### 1. Application Type (select one)

- Development Plan Consent only** (Planning Only)    
  **Building Rules Consent only** (Building Only)    
  **Development Approval** (Planning and Building)

### 2. Location of Proposed Development

Unit #: \_\_\_\_\_ House #: 68 Street: Albert st  
 Suburb: Prospect Postcode: 5082 CT Volume and Folio: \_\_\_\_\_

### 3. Details of Parties

#### Applicant

Name: Anthea Drever Address: 68 Albert st Prospect  
 Contact No.: \_\_\_\_\_ Email: \_\_\_\_\_

#### Owner as applicant

Name: Bradley Drever Address: 68 Albert st Prospect  
 Contact No.: \_\_\_\_\_ Email: \_\_\_\_\_

#### Builder owner builder as applicant to be advised other

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 Contact No.: \_\_\_\_\_ Email: \_\_\_\_\_

Builders Licence No. \_\_\_\_\_

### 4. Proposal Details

Description of Proposal: Removal of significant tree  
 Existing Use of Property: \_\_\_\_\_  
 Estimated Cost of Development: \$10 - 15,000 ?

### 5. Declarations

- Building Rules Classification sought: \_\_\_\_\_ Present Class: \_\_\_\_\_
- Proposed number of employees (for Class 5, 6, 7, 8 or 9): \_\_\_\_\_
- Proposed number of persons for whom accommodation is provided (Class 9a only): \_\_\_\_\_
- Proposed number of occupants on the premises (Class 9b only): \_\_\_\_\_
- Does Schedule 21 or Schedule 22 of the Development Regulations 2008 apply (activities of environmental or major environmental significance)?  yes  no
- Has the Construction Industry Training Board (CITB) levy been paid?  yes  no

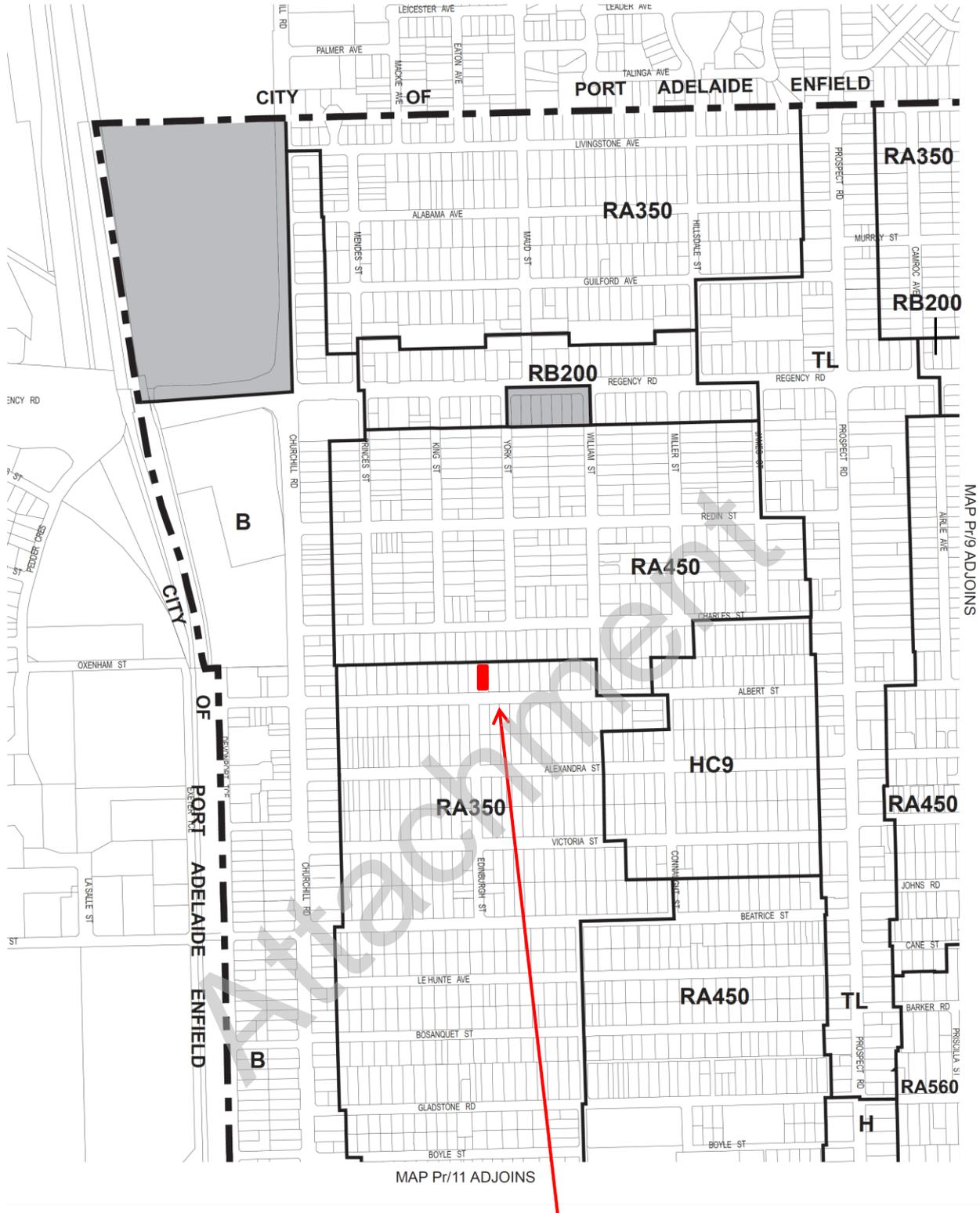
I acknowledge that Council may make copies of this application and documentation in accordance with the *Development Regulations 2008* and *Development Act 1993*. Details forming part of the application may be included in a Development Assessment Panel agenda published on Council's website.

If published, I request that Council obscures my telephone number and email address.  yes  no

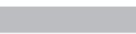
I have sought permission from the architect/engineer to allow reproduction of the application documents for provision to third parties.  yes  no

Name: Anthea Drever Signature: [Signature] Date: 30/03/2017

- Applicant    
  Owner    
  Builder



- RA560** Residential Policy Area A650
- RA450** Residential Policy Area A450
- RA350** Residential Policy Area A350
- RB200** Residential Policy Area B200
- TL** Transit Living Policy Area
- B** Boulevard Policy Area
- H** High Street Policy Area
- HC9** Historic Conservation Area 9 Policy Area

-  Policy Area Boundary
-  Development Plan Boundary
-  Area not covered by Policy

**Subject Land**

Scale 1:8000



**PROSPECT COUNCIL  
POLICY AREAS  
MAP Pr/8**

Consolidated - 21 April 2016



Civic Centre  
 128 Prospect Road  
 Prospect SA 5082 AUSTRALIA  
 Telephone: 08 8269 5355  
 Email: admin@prospect.sa.gov.au



**Notes**

**Disclaimer**  
 This map is a representation of the information currently held by the City of Prospect. While every effort has been made to ensure the accuracy of the product, Council accepts no responsibility for any errors or omissions. Any feedback on omissions or errors would be appreciated.

January 17, 2017

City of Prospect  
Planning and Building Development  
128 Prospect Road  
PO Box 171  
Prospect SA 5082

PROSPECT

Dear Sir / Madam

Please find attached a Development Application Form and supporting documents for the proposed removal of a Significant River Red Gum (*Eucalyptus camaldulensis*), located at 68 Albert Street Prospect.

The subject tree is located in the north-eastern corner of the site and while having a circumference of less than 3m, the tree is determined 'Significant' within the City of Prospect Development Plan.

It is our opinion that the subject tree is causing significant damage to a substantial building/structure of value; and all other reasonable remedial treatments and measures have been ineffective as explained below.

Since we have resided at the address we have regularly consulted qualified arborists to inspect the subject tree. In accordance with their recommendations, maintenance pruning per Australian standards has been undertaken and a Root Barrier installed (refer to Appendix 3). Care has been taken to retain and maintain the subject tree.

It is evident the tree is causing damage to our alfresco and garage area; a structure of significant value. The garage and alfresco area form an extension of the main dwelling. These structures sit within the roof as can be seen in Appendix 1. The internal ceiling of the garage (north eastern corner) has sustained repeated water damage and has collapsed (Appendix 2 – photos of damage). The water damage occurs as a result of tree debris<sup>1</sup> blocking the drainage of the gutters. Water is forced to overflow into the internal cavity of the roof, causing rapid decline in the structure and ultimately causing collapse.

Regular gutter cleaning and maintenance has become our weekly routine to limit water ingress and damage. This is not practical or sustainable. Only small amounts of debris cause the issue to occur. In drier month's tree debris increases, rain events become less predictable; currently the risk could only be mitigated with daily cleaning.

Photos of the damage have been included (refer Appendix 2). Given the uniqueness of the circumstance we welcome the Panel members to visit the site and view the damage first hand.

The damage has previously been repaired under our Home and Contents insurance as well as unclaimed repair on separate occasions. These are listed below in the timeline (see Table 1).

We have investigated and undertaken all reasonable courses of action to address the drainage and backflow issue, specifically;

- Undertaken weekly gutter clearing of leaf litter/debris
- Gutter cleaning directly before forecast rains
- Installation of rain-head
- Fitting new roof flashings
- Fitting debris filters over the downpipes
- Root barrier installation to eliminate possibility of tree roots contributing to blocking of drainage and lifting under rear doors (rear access to house)

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<sup>1</sup> Please be advised that the subject tree is the sole vegetation adjacent to, and overhanging, the garage

- o Approved maintenance pruning of the tree

The timeline and costing for these actions is outlined in table 1.

Gutter guard cannot be considered because the flat roof pitch and box gutter are not compatible with installation.

Having exhausted all reasonable courses of action, two solutions remain to resolve the structural issues;

- (a) Removal of the subject tree, or
- (b) Extraction, re-engineering and re-installation of the entire garage/alfresco area.

We believe it cannot be guaranteed that re-engineering the roof will eliminate the risk of ongoing water damage.

The cost to re-engineer and construct a new roof capable of resisting the bulk of the debris above the garage has been quoted by Josh Darlington at \$25,000 (Old Port Roofing- see report and quotation supplied with documentation). We are yet to get quotes to repair the ceiling beneath the roof structure. Including costs that have already been incurred to repair previous damage, the total cost of works will be greater than \$32,000. We consider this to be an unreasonable cost to retain the subject tree.

In accordance with Principle of Development Control 349 a) (2) of the City of Prospect Development Plan, it is demonstrated that all reasonable alternative development options and design solutions have been considered and as such, tree removal is warranted.

Further, Council Wide Object 41 is considered relevant in this circumstance which states that *'while indiscriminate and inappropriate significant tree removal should be generally prevented, the conservation of significant trees should occur in balance with achieving appropriate development'*.

We hope that the Council appreciates and concurs that we have explored all reasonable options to retain the subject tree and welcome the Panel members to attend an on-site meeting to view the damage.

We look forward to hearing from you at your earliest convenience.

Regards,

Bradley and Anthea Drever

**Table 1 - Timeline of actions and damage witnessed**

\*Photo evidence in appendix, # estimated costs

DATE	DAMAGE/EVENT	REPAIRS UNDERTAKEN	COSTS INCURRED	CONTRACTOR
4/03/2012	<i>House purchased</i>			
15/03/2012	*Water into ceiling cavity	Drill holes filled, repainted New flashings installed to prevent ingress Painting	(approx. \$100#) \$2739 <del>\$1660</del> 660	Self-repaired Old Port Roofing PR Painting
15/03/2012 ongoing	Water into ceiling cavity – creating sag	TBA		
16/10/2012		Ceiling repair, re-plasterboard, flush and sand Paint	Insurance claim – WFI (approx. \$2500#)	GPR PR Russo
09/03/2013		Arborist verbal consult	\$165	Arborman Tree Solutions
26/07/2013		Engineering consult & report	\$385	CRW Consulting Engineers
12/08/2013		Arborist consult & report	\$660	Arbocare Tree & Garden Solutions
14/08/2013	*Water into ceiling cavity	TBA		
18/09/2013	*Water into ceiling cavity	TBA		
15/12/2013		Rain-head installed, resealed corner section near flooded sealing, replace ridge capping Ceiling repairs and repainted	\$1290 Self-repaired (approx. \$100#)	Goodger Custom Construct Self-repaired
14/02/2014	*Water into ceiling cavity and flooding of carport			
27/08/2014		Root Barrier installed, tree pruning	\$2629	Adelaide Tree Surgery
08/09/2016	*Water into ceiling cavity	TBA		
27/12/2016	*Water into ceiling cavity and collapse of ceiling roof	Quoted for Re-engineering of Roof Ceiling repair and repainting	\$21780 (quoted) TBA	Old Port Roofing TBA
TOTAL			Min <del>\$34008.00</del> (\$1223 estimated expenses in total)	\$33008.00

**Appendix 1:**

---

**Image 1** – Photos of the rear entertaining area adjacent carport Arrow indicates carport adjacent tree, where damage has occurred (2012)



**Image 2** - Demonstrates extension of alfresco area at rear of house (2014)



Image 3 – Photo taken from living room toward rear deck underneath alfresco area (2015)



Image 4 – Image of alfresco area post ceiling repair. Area of existing damage indicated by red arrow (2015)



**Appendix 2- Photos of the damage**

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**Image 5** – 15<sup>th</sup> March 2012. Water draining from drill holes in ceiling cavity made to drain water from ceiling



**Image 6** - 23<sup>rd</sup> October 2012, New Flashings were installed prior to plaster repair and painting being undertaken  
I



**Image 7** - 23<sup>rd</sup> October 2012, New Flashings were installed prior to plaster repair and painting being undertaken



**Image 8** - 14<sup>th</sup> August 2013, Water coming through drill holes again in ceiling

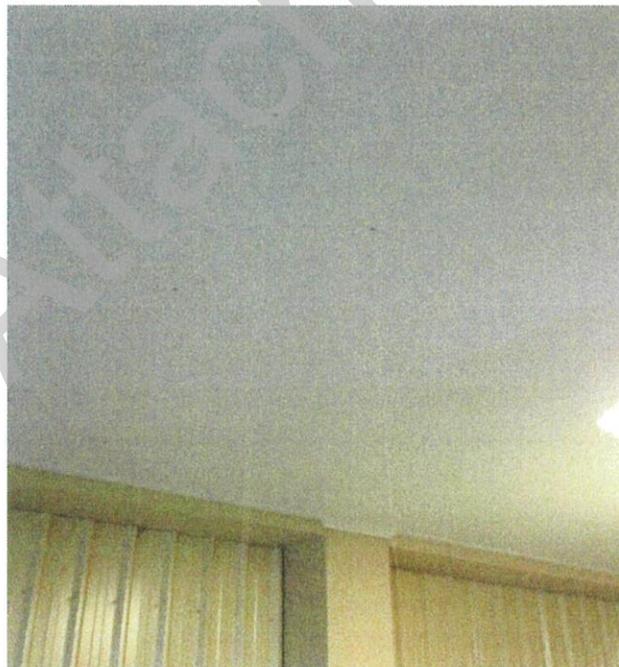


Image 9 - 14<sup>th</sup> August 2013, Damage to the ceiling after rain



Image 10 – Water pouring from fluorescent light during rain on 8<sup>th</sup> September 2016



Image 11 - 18<sup>th</sup> September 2013, Water damage to ceiling



Image 12 – 2016, damage to the ceiling after rain



**Image 13** – Photograph taken December 27<sup>th</sup> 2016, during recent rain event. Rain water is demonstrated pouring from the ceiling after collapse (Red Arrow)



**Image 14 / 15** - Photographs looking downward, taken on the 31<sup>st</sup> December 2016 after damage. Demonstrates rain head (yellow arrow - path of overflow) and down pipe (location marked with red arrow) completely obstructed from leaf litter. This is the primary cause water ingress that resulted in ceiling collapse on the 27<sup>th</sup> of December as well as each occasion prior. Green arrow indicates debris in neighbor's gutter.



**Images 16 - 18<sup>th</sup> September 2013**, Removal of pavers at the site shows backflow of storm water drain which was blocked by tree roots



**Image 17 - 18<sup>th</sup> September 2013**, Removal of pavers at the site shows backflow of storm water drain which was blocked by tree roots



**Image 18 - 18<sup>th</sup> September 2013**, Removal of pavers at the site shows backflow of storm water drain which was blocked by tree roots



**Images 19 & 20 - 14<sup>th</sup> February 2014**, Carport flooded by rain that has passed through ceiling cavity in garage and from neighbors property



**Appendix 3- Copy of council approval for maintenance pruning & root barrier installation and copy of receipt from arborist**

---

Attachment



## CITY OF PROSPECT

128 Prospect Road, Prospect SA 5082

Telephone (08) 8269 5355 Facsimile (08) 8269 5834

To: Mr B Drever & Mrs A Drever  
68 Albert Street  
PROSPECT SA 5082

### DECISION NOTIFICATION

Development Application: **050/111/2013**

Dated: 04/04/2013

Registered: 04/04/2013

Location: 68 Albert Street PROSPECT

Description: Tree Damaging Activities (Pruning of Tree and Installation of Root Barrier) to Significant Tree

The following decisions have been made in respect of the development application:

NATURE OF DECISION	DETERMINATION	NO. OF CONDITIONS	DATE OF DECISION
Development Plan Consent	Granted	1	20/03/2014
Development Approval	Granted	1	20/03/2014

- Any conditions that have been imposed against the authorisation(s) granted herein and advisory notes that may be relevant to the development are detailed on the following page(s).
- The application was determined to be a **Category 1** application for the purpose of public notification. **No** representation(s) were received from third parties.
- The building classification assigned to the development under the Building Code is: N/A
- The development authorisation (consent or approval) granted herein remains operative for a period of 12 months from the date of the decision.

Signed:  .....

Chief Executive Officer

Delegate

Date: 20/3/14 .....

## Conditions and notes that apply to this authorisation

Where relevant to the ongoing maintenance or operation of the development to which this authorisation applies, the condition(s) identified herein will continue to apply unless or until varied or revoked by the relevant authority.

Any conditions detailed herein are binding on and enforceable against:

- the person by whom the development is undertaken;
- any person who acquires the benefit of the decision or the development; and
- the owners and occupiers of the land on which the development is undertaken.

### Conditions of Development Plan Consent

The following conditions apply to the Development Plan Consent. These conditions have been imposed in accordance with the *Development Act 1993* to ensure the development complies with the provisions of Council's Development Plan and relevant legislation:

All tree damaging activities must be undertaken in accordance with the relevant Australian Standards and the arborist report prepared by Sam Cassar and dated December 2013.

### Advisory Notes

The following advisory notes are provided for your information:

***Notification to the Kurna Nation Cultural Heritage Association Incorporated (Heritage Association) may be required.***

Please be advised that it is an offence under the Aboriginal Heritage Act to damage, disturb or interfere with any Aboriginal site, object or remains. In the event that the building works reveal a suspected Aboriginal site, object or remains, the Minister for Aboriginal Affairs and Reconciliation must be notified. The Minister can be contacted via the Department of the Premier and Cabinet – Aboriginal Affairs and Reconciliation Division, GPO Box 2343 Adelaide SA 5001, phone 8226 8900.

Please note that the Heritage Association is responsible for undertaking heritage surveys in the Indigenous Land Use Agreement (ILUA) area, which is defined as that geographical area of land and waters within the outer boundaries of the geographical area of land and waters comprised in, and the subject of, the native title application known as the Kurna Peoples native title claim SC 00/1 recorded as native title determination application no. SAD 6001/00 in the Federal Court of Australia.

This decision was based on an assessment of the proposal against relevant legislation and conditions imposed were designed to ensure satisfactory compliance with it.

You may have a right of appeal if this Notification is:-

- a refusal
- or**
- a consent/approval with conditions

Such an appeal must be lodged within two months of the day on which you receive this notice or such longer time as the Environment, Resources & Development Court may allow. Please contact the Environment, Resources & Development Court (Telephone 8204 0300) if you wish to appeal.

If this is a consent/approval with or without conditions, the development must be substantially commenced within 12 months of the date of this Notification unless this period has been extended by the Council or Development Assessment Commission.

***and***

Any act or work authorised or required by this Notification must be completed within 3 years of the date of Notification or a longer time as allowed by the Council or the Development Assessment Commission.

You will require a new consent/approval before commencing or continuing the development if you are unable to satisfy these requirements.

Attachment

**Appendix 4- Copies of insurance claim documents and receipts for repairs**

---

Attachment

# STATEMENT

Anthea Drever  
68 Albert Street  
PROSPECT SA 5082

Statement Date  
06 Aug 2014

ABN  
33 099 478 994

Tree Aware Pty Ltd  
3 Ellemsea Circuit  
LONSDALE SA 5160  
AUSTRALIA

## Balance due in AUD, Australian Dollar

Date	Activity	Reference	Due Date	Invoice Amount	Payments	Balance AUD
30 Jul 14	Invoice # INV - 4622		01 Aug 14	935.00		935.00
30 Jul 14	Invoice # INV - 4623		01 Aug 14	1,694.00		1,694.00
<b>BALANCE DUE</b>						<b>2,629.00</b>

## PAYMENT ADVICE

Tree Aware Pty Ltd  
3 Ellemsea Circuit  
LONSDALE SA 5160  
AUSTRALIA

Customer	Anthea Drever	
Overdue	Current	Total AUD Due
2,629.00	0.00	2,629.00
Amount Enclosed		

Enter the amount you are paying above

151 Port Road, Queenstown SA 5014  
 Phone: 8341 2555 Fax: 8341 1411 Email: admin@oldportroofing.com.au  
 A.C.N. 143 482 606 A.B.N. 49 760 086 295

Brad Drever  
 68 Albert St  
 Prospect SA 5082

Invoice No 00001471  
 ALBERT

**TAX INVOICE**

10/09/2012

For work at 68 ALBERT ST PROSPECT

Apply and fix new zincalume apron flashings to rear verandah and replacement of 4 trimdek sheets

includes the following:-

- \* 30 Lm of custom zincalume apron flashings
- \* Replacement of 4 damaged TL5 zincalume sheets on the hip end
- \* Pull out dents in roof and strengthen with flashing

\$2,350.00

Please note: Extra charges may apply for works to timber frame, assessed when cladding removed

EXTRA: 6Lm 230x45 Timber Beam

\$140.00

*Please Note 7 Day Account*

Sub Total	\$2,490.00
GST	\$249.00
Less paid	\$0.00

Any queries please do not hesitate to contact Andrew on 0415 833 372 or Josh on 0411 780 635

**\$2,739.00**

Yours sincerely,

Josh Darlington  
 OLD PORT ROOFING

ACCOUNT DETAILS  
 National Australia Bank  
 BSB 085 397  
 Account - 17404 7116

# PR Painting

- 11 Mountbatten Grove West Beach SA 5024 **Mobile** 0412 513 738
  - **ABN.** 34 528 076 524 **Licence No.** BLD 154590
    - **Email** prpaint@bigpond.net.au

**Date:** 20/11/12

**Tax Invoice:** 281213\_

**Mr. Bradley Drever**

## FINAL ACCOUNT

**JOB DESCRIPTION:** Painting garage ceiling damaged by water at:  
**68 Albert St, Prospect**

### JOB COST

#### **LABOUR:**

Peter..... \$480.00

**SUB TOTAL \$480.00**

#### **MATERIALS:**

##### **Solver**

4L Washable suede C/B Off White..... \$50.00

1L Maxi wash flat Dulux natural White ..... \$40.00

1L Ceiling flat Dulux natural White ..... \$30.00

**SUB TOTAL: \$120.00**

**SUB TOTAL: \$600.00**

**10% GST: \$ 60.00**

**TOTAL INCLUSIVE OF GST: \$660.00**

## THANK YOU

**Note:** For convenience you may choose to pay this account by directly transferring the balance into my bank account. My bank account details are as follows:

National Bank Account Name: Peter Russo

BSB No. 085 397

Acc. No. 655 187 590

Peter Russo

**PR Painting**

20/11/12



# Cheque Payment Remittance Advice

Call 1300 934 934 for your local office or visit wfi.com.au

Page 1 of 1



GNWFI/P/311012 /109 /1 /109  
 B S J DREVER  
 68 ALBERT STREET  
 PROSPECT SA 5082

032-149

Date:	31 October 2012
Vendor No.:	2594131-0584273
Cheque No	2594131

*Please find the attached cheque and remittance detailing your payment. If you have any queries, please phone 1300 934 934.*

Date	Reference	Description	Amount
26 Oct 12	3157654	CLAIM NO:3157654 SETTLEMENT FOR PAINTING REPAIRS AS PER: - PR PAINTING QUOTATION (DATED:23/10/12) INCLUDING GST  SHOULD YOU HAVE ANY QUERIES PLEASE CONTACT JENNY CALLAGHAN ON 08 8373 9204	660.00
<b>PAYMENT AMOUNT</b>			<b>\$660.00</b>



# Cheque Payment Remittance Advice

Call 1300 934 934 for your local office or visit wfi.com.au

Page 1 of 1



GNWFI/P/221012 /142 /1 /142  
 B S J DREVER  
 68 ALBERT STREET  
 PROSPECT SA 5082

032-149

Date:	22 October 2012
Vendor No.:	2592763-0571762
Cheque No	2592763

*Please find the attached cheque and remittance detailing your payment. If you have any queries, please phone 1300 934 934.*

Date	Reference	Description	Amount
18 Oct 12	3157654	CLAIM NO:3157654 SETTLEMENT FOR CEILING REPAIRS AS PER: - GENERAL PLASTERBOARD REPAIRS PTY LTD TAX INVOICE NO:181 INCLUDING GST  LESS POLICY EXCESS  SHOULD YOU HAVE ANY QUERIES PLEASE CONTACT JENNY CALLAGHAN ON 08 8373 9204	1,450.00    150.00-
<b>PAYMENT AMOUNT</b>			<b>\$1,300.00</b>



Locked Bag 5  
Kent Town DC SA 5067  
Phone: (08) 8373 9282 - Other Claims  
Phone: (08) 8373 9284 - Motor Vehicle Claims  
Fax: (08) 8373 9260  
Email: [claimssa@wfi.com.au](mailto:claimssa@wfi.com.au)

In Reply Please Quote: 3157654

16 July 2012

Mr B S J Drever  
68 Albert Street  
Prospect SA 5082

Dear Sir/Madam

**TYPE OF CLAIM** : WATER DAMAGE TO CEILING  
**Date Of Loss** : 15 May 2012

We acknowledge advice of the above claim. To enable us to proceed we require the following:

- One repair quotation

Ordinarily, we would undertake to advise you of the progress of your claim within every 20 business days however, we will not be in a position to do this without the requested documents/information.

We will therefore wait to hear from you before we take any further action.

If you are not satisfied with this arrangement or if you have any queries or require further assistance then please let us know.

Yours faithfully,

  
Jenny Callaghan  
Claims Officer  
Direct Line: (08) 8373 9282

G1a

HEAD OFFICE: 184 Railway Parade Bassendean WA 6054. Telephone: (08) 9273 5333. Facsimile: (08) 9378 2172

Locked Bag 1 Bassendean DC WA 6942. [www.wfi.com.au](http://www.wfi.com.au)

WFI is a trading name of Wesfarmers General Insurance Limited • ABN 24 000 036 279 • AFSL 241461

Registered Office: 40 The Esplanade, Perth WA 6000

Printed on 80gsm Tudor RP 100% Australian recycled paper



**Arborman Tree Solutions Pty Ltd**

23 Aberdeen Street  
 Port Adelaide SA 5015  
 08 8240 5555  
 arborman@arborman.com.au  
 ABN: 59 110 705 943  
 ABN 59 110 705 943

**Tax Invoice**

INVOICE TO  
 Drever, Brad  
 68 Albert Street  
 Prospect SA 5082

INVOICE NO. 10486  
 DATE 09/03/2016  
 DUE DATE 09/03/2016  
 TERMS Due on receipt

ACTIVITY	AMOUNT
Verbal consultation at 68 Albert Street, Prospect on 9 March 2016 Ref: ATS3505-068AlbStEcam	150.00

Thank you for choosing Arborman Tree Solutions Pty Ltd	SUBTOTAL	150.00
	GST TOTAL	15.00
	TOTAL	165.00
	BALANCE DUE	<b>A\$165.00</b>

Payment of your invoice may be made by:  
 Cash, Money Order or Cheque - in person or by post.  
 Credit Card - please call us on 08 8240 5555 and have your invoice number and credit card details ready.  
 EFT Direct Debit - BSB: 085 397 Account: 574 301 435

# CRW CONSULTING ENGINEERS

A.B.N. 50 007 669 070

COLIN R. WALKER & ASSOCIATES PTY. LTD.

Head Office: 193 West Terrace, Adelaide

South Australia 5000.

Phone: (08) 8231 4150

Fax: (08) 8231 5954

Email: info@crwengineers.com.au

Website: www.crwengineers.com.au

B & A Dreuer  
68 Albert St  
Prospect SA 5082

## TAX INVOICE

Date: 26/07/2013

Inv No: 00009251

### MEMORANDUM OF FEES

Our Ref: F05153

TREE REPORT AT 65 ALBERT ST PROSPECT

### FOR PROFESSIONAL SERVICES RENDERED:

- Site Inspection 19/7/2013
- Tree Report

\$350.00

*paid via Bpces 29/7/13*  
*ref# 1003486692512*  
*recept # 375584.*  
*\$385.00 from*  
*ANZ online same*

**DUE DATE FOR PAYMENT: 9/08/2013**

10% GST:

\$35.00

**BALANCE DUE:**

**\$385.00**

**STRICTLY 14 DAYS FROM INVOICE DATE**

Please Note: Failure to pay invoice by the due date may result in costs being recovered by our Debt Collection Agency. If this occurs, you will be charged for all collection costs in relation to the recovery of any monies outstanding.

### HOW TO PAY

Powered by 



#### by mail

Detach this section and mail your cheque to above address.

EFT

ANZ Banking Group Limited  
Colin R. Walker & Associates Pty. Ltd.  
BSB: 015-367  
ACC: 2646 19165

PLEASE QUOTE INVOICE NUMBER

Email remittance advice to:

reception@crwengineers.com.au



Billers code: 716548

Ref: 1003 4866 9251 2

Contact your financial institution to make this payment. Minimum payment of \$10.00 from your bank account (Excluding credit cards). The following biller name will appear on your bank statement - MYOB PAY BUILDING



#### credit card by phone

Call 1300 855 558 to pay via MasterCard or VISA. Minimum payment \$10.00. Maximum payment \$5,000. Quote Ref: 1003 4866 9251 2



#### in person

Present this invoice at any Post Office to make a payment via cash or EFTPOS. Cheque payments not accepted. Minimum payment \$10.00. Maximum payment \$10,000.



\*749 1003486692512

Invoice #: 00009251

Amount Due: \$385.00

Established in 1957  
Consulting Engineers



Arborcare Tree and Garden Solutions

**ABN: 98 473 285 873**PO Box 1061  
PASADENA 5042

M: 0430 432 007

E: [arborcare@tpg.com.au](mailto:arborcare@tpg.com.au)W: [www.arborcaresolutions.com.au](http://www.arborcaresolutions.com.au)**Tax Invoice 2801**Date 12<sup>th</sup> August 2013Mr. B and Mrs. A Drever  
68 Albert Street,  
Prospect S.A. 5082**Development Application 050/111/2013**

I was asked to provide the following report in relation to the application submitted by the applicant for removal of a significant River red gum (*Eucalyptus camaldulensis*) next to the rear of a dwelling located at 68 Albert Street, Prospect. The tree in my opinion has been severely impacted upon with excavation of the site to allow reasonable development to occur while protecting the tree. The owner is concerned about the lifting of the pavers; movement and blocking of stormwater pipes and movement to cracking of the concrete floor and walls of the dwelling.

Site Inspection	\$200.00
Tree Report	\$400.00
<b>Combined Totals</b>	<b>\$600.00</b>
	<b>G.S.T. \$ 60.00</b>
	<b>Combined Totals \$660.00</b>

Please contact me if you require any additional detail or clarification of any items covered in the tree report, or if I can be of any further assistance.

Yours faithfully

David Mably (Electronic Signature 10/8/2013)

David Mably  
ISA Certified Arborist AU-0285A  
**Ad Dip Hort (Arb) Aust.**  
**Ass Dip. App Sci. (Park Management) Aust.**  
**Cert Tree Surgery U.K.**  
Senior Consulting Arborist

\$660.00  
paid 14/8/13  
from online saver  
ANZ.

**Payment Slip:****TAX INVOICE 2797**

Direct payment can be made to:-

Arborcare Tree and Garden Solutions

Bank: ANZ

BSB No: 015225

A/C No: 900766255

And or send cheque to Arborcare Tree and Garden Solutions P O Box 1061 Pasadena. S.A. 5042

**Payment due within 7 Days of Invoice date 12<sup>th</sup> August 2013**

# Goodger Custom Construct

## Tax Invoice

Invoice No: 24  
 Date: 15 December 2013  
 Terms: NET 7  
 Due Date: 22 December 2013

55 Wootona Av  
 Christies Beach

ABN: 99649948589  
 0439367416  
 Lukegoodger@gmail.com

**Bill To:** Brad And Anthea Drever

Description	Quantity	Rate	Amount
Roof repair Rain head installation Cement sheeting to eaves Down pipe and storm water installation Hip flashing installation Roof sheet replacement	1	\$1,290.00	\$1,290.00*

\* Indicates non-taxable item

Subtotal	\$1,290.00
GST (10.00%)	\$0.00
<b>Total</b>	<b>\$1,290.00</b>
Paid	\$0.00
<b>Balance Due</b>	<b>\$1,290.00</b>

Mr Luke Goodger  
 Commonwealth bank  
 Bsb: 065900  
 Account 00672251

55 Wootoona Ave  
Christies Beach 5165  
Ph: 043 936 7416  
Abn: 996 499 485 89  
Lukegoodger@gmail.com

## GOODGER CUSTOM CONSTRUCT

### Quote for Roofing Work to be Done at 68 Albert St Prospect. 21/11/2013

#### The quote covers:

- Replacing the ridge Flashing with a new flashing that is 650mm wide instead of the existing 450mm
- Whilst the flashing is off I will replace the two sheets that seem to be damaged.
- Ill make sure the existing sheets are all weathered properly and ill apply silicone to the end of the sheets where needed.
- Ill install a R11 rain head to pillar. Which will only act as an overflow. I.e. No downpipe attached to the rain head.
- Ill make a penetration through the back of the box gutter into the back of the rain head and connect these two with a Shoot of 100x100 square downpipe material. The outlet will be positioned about 20mm up from the bottom of the box gutter. To ensure the outlet only gets used when the other downpipe has failed.
- The quote also includes the cement sheet cladding to the eaves which will possum and bird proof your main roof.

#### Materials Include:

- 6m of ridge capping
- 4m of roof sheeting TL5
- Rain Head (Style R11)
- Roof and Gutter silicone
- Pop rivets
- 100mmx100mm rain head shoot
- Cement sheeting
- 9 m of Scotia moulding

I have allowed two days labour to complete the job.

#### Job Total \$1240

Let me know if you wanted to go ahead with the quote and ill order the roofing material early next week. the manufacturing time they told me on the phone was about six working days to make the rain head. I could probably install the material towards the end of the first week in December. (5th-6th)



3 Ellemsea Circuit  
LONSDALE SA 5160  
AUSTRALIA  
Phone - 08 8371 5955 Fax - 08 8297 6885  
Email - admin@adelaidetreesurgery.com  
Website - www.adelaidetreesurgery.com.au

ABN  
33 099 478 994

Anthea Drever  
68 Albert Street  
PROSPECT SA 5082

**STATEMENT**  
**Statement Date**  
27 Aug 2014

Date	Activity	Reference	Due Date	Invoice Amount	Payments	Balance
30 Jul 14	Invoice # INV - 4622		01 Aug 14	935.00		935.00
30 Jul 14	Invoice # INV - 4623		01 Aug 14	1,694.00		1,694.00
<b>BALANCE DUE</b>						<b>2,629.00</b>

**PAYMENT METHODS**

Cheque, Money Order, VISA, Mastercard and Direct Credit

Account Name - Tree Aware Pty Ltd  
Bank - National Australia Bank  
BSB - 085 375  
Account No. - 5399 54721

Please include Invoice number in Bank Transaction

Customer	Anthea Drever	
Overdue	Current	Total AUD Due
2,629.00	0.00	2,629.00

Amount Enclosed

**REMITTANCE ADVICE**

Phone - 08 8371 5955  
Fax - 08 8297 6885  
Email - accounts@adelaidetreesurgery.com

Enter the amount you are paying above



151 Port Road, Queenstown SA 5014  
Phone: 8341 2555 Fax: 8341 1411 Email:  
admin@oldportroofing.com.au  
A.C.N 143 482 606 A.B.N. 49 760 086 295

Brad Drever  
68 Albert St  
Prospect SA 5082

# QUOTATION

18/10/2016

Quotation No. 00004819

## REPORT

After close inspection and investigation on the water ingress of the rear carport/alfresco, Old Port Roofing believe that the box gutter design and depth is not sufficient enough to cope with heavy rains.

A large contributing problem that effects the box gutter is the gum tree debris.

Due to the depth of the box gutter one tiny bit of gumtree debris would be enough to cause water ingress in even the lightest rains.

To rectify this problem the entire roof structure would have to be modified and re-engineered.

To create a deeper box gutter to meet Australian standards, the costs to undertake this works. \$19,800.00

Any queries please do not hesitate to contact  
Andrew on 0415 8333 72 or Josh on 0411 780 635  
or Charlie on 0419801657,  
Yours sincerely

Sub Total \$19,800.00  
GST \$1,980.00  
**BALANCE \$21,780.00**

Josh Darlington  
OLD PORT ROOFING

Quote No. 00004819

I/We accept this quotation and authorise OLD PORT ROOFING to carry out the work as detailed above.  
I/We acknowledge I/we have read and understand the terms and conditions of sale printed on the back of this quotation.

My selected Colorbond colour is: Deposit enclosed \$.....  
ROOF..... Client Signature .....  
GUTTER..... Date.....

# SYMATREE



## **Tree Assessment** **68 Albert Street, Prospect**

File Number: DA 050/127/2017

### **Report prepared for**

Scott McLuskey  
Development Officer - Planning  
City of Prospect  
May 2017

### **Report prepared by**

**Sam Cassar**  
Cert.3 (Hort), Dip. (Hort 5), Dip. (Arb 5), B.App. Sc (Hort), Grad. Dip. Design (Land.)  
Member Australian Arboriculture and South Australian Society of Arboriculture

## Table of Contents

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Observations .....	4
Appraisal .....	7
Principles of Development Control .....	9
Conclusion .....	11
Appendix A - Aerial Image .....	12

Attachment

## Introduction

---

### Instructions

I was instructed by Council to reassess a mature River Red Gum located in the rear yard of 68 Albert Street, Prospect. My brief was to undertake the following:

- Assess the health and structural condition.
- Determine reasonable/appropriate remedial measures that could be taken to address the issue identified by the applicant regarding property damage caused by leaf litter, and.
- Recommend appropriate action/s.

### Site Visit

I carried out a follow-up inspection of the tree on the 3 May 2017. An initial inspection was conducted on the 26 November 2013.

### Documents and Information provided

Council provided a copy of the information provided by the applicant including images, and comments which relate to the tree and recent damage caused to the ceiling of a rear alfresco area.

### 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 5 May 2017.

## Observations

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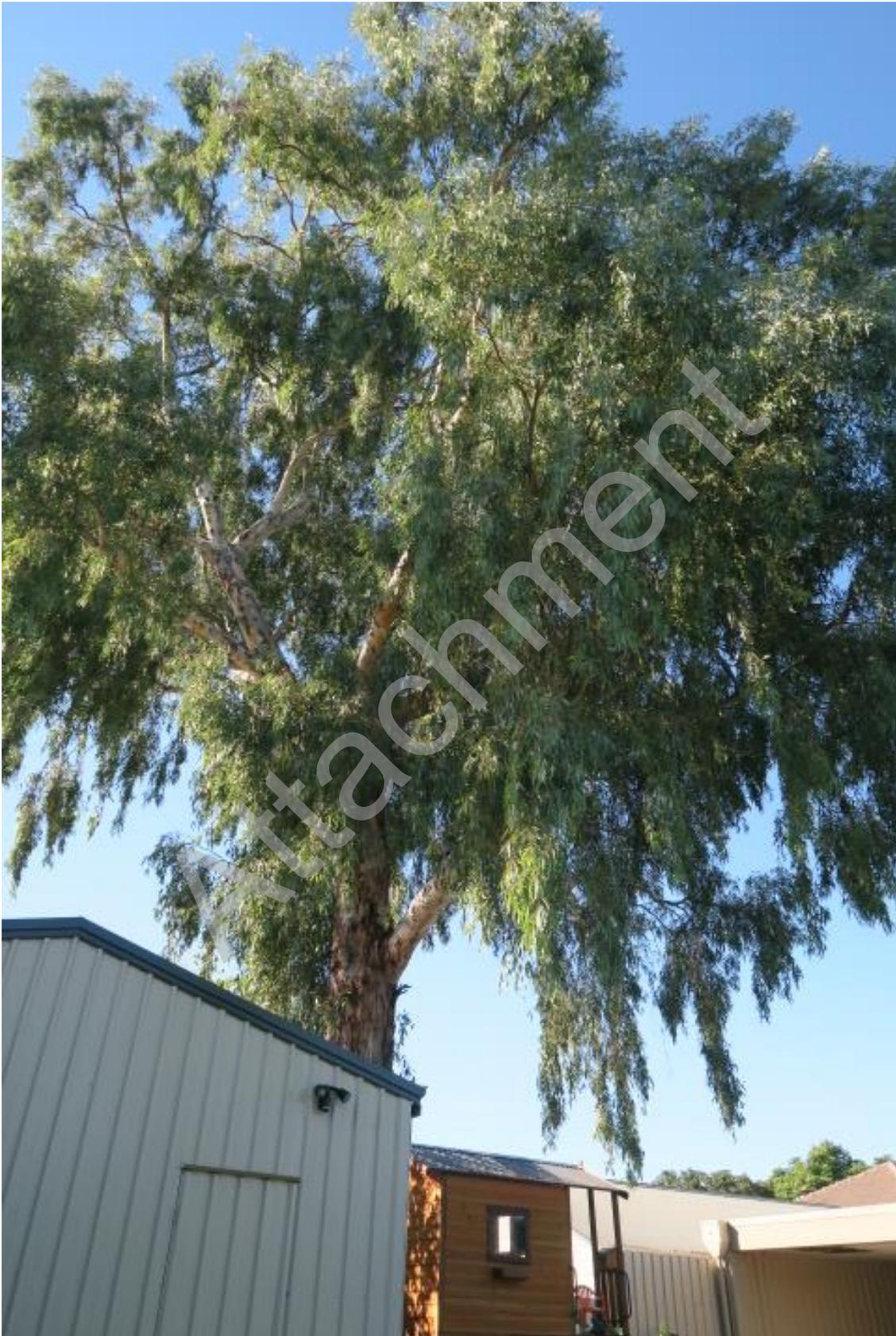


Figure 1 Subject tree, viewed from the north-west.

## Observations (cont)

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### Location of tree

The tree is located within a gravel area in the rear yard between the shed and children's chuddy house (refer Figure 1). The trunk centre is 2.1 metres from the eastern boundary fence and 7.6 metres from the edge of the deck.

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

### Species

*Eucalyptus camaldulensis* commonly referred to as a River Red Gum.

### Crown attributes (approx.)

Height: 20 metres (visual estimate).

Width (from trunk measured out): south 5.1 metres, north 7.0 metres, west 8.5 metres and to the east 69.0 metres (visual estimate).

### Circumference at one metre above natural ground level

Single trunk: 2.92 metres.

The subject tree is listed in Council's Development Plan, Significant Tree Table Pr/4, therefore the tree qualifies as a Significant tree under the Development (Regulated Trees Variation) Regulations 2011.

### Tree Age

Mature.

### Structure/Condition

The subject tree consists of a single trunk to a height of approximately 5 metres at which point three main branches arises to form a relatively broad spreading canopy that has a bias towards the north-west. The trunk has a slight bias towards the north.

The trunk appears to be sound and stable with no cavities. There is no evidence of internal decay, termite or significant borer damage except one or two exit holes.

The canopy still appears to be in good health with foliage density and vigour normal and typical of the species. All leaders and lateral branches are healthy and actively growing. The canopy is free from notable pests and diseases. Small volume of dead wood is present within the crown.

The attachment point between the central and north-western main leader appears partially included. Although this defect exists the union appears sound, with minimal potential for structural failure at this point. The remaining branch unions appear to be sound and free of any recognizable significant structural flaws or weaknesses that can be observed from ground.

## Observations (cont)

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The tree does display a history of one additional minor branch failure since the tree was initially inspected. This failure was a second order branch, western side; approximately 13 metres from ground with an estimated diameter of 60mm (refer Figure 2). The failed branch was still wedged within the tree.

A trunk wound is evident north side; approximately 3 metres from ground that also appears to be a previous failure that occurred sometime ago.

Several of the secondary branches in the lower to mid crown north-eastern and southern sides have horizontal /descending orientation and some overextension evident.

Evidence of recent pruning to manage the crown was noted.



Figure 2. Recent failure, circled in red. Tree viewed from the west.

## Property Damage

Two areas of ceiling damage to the rear entertainment area was noted.

## Appraisal

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The subject tree is considered Significant under the current provisions of the Development Act.

This tree has a strong visual presence/appeal within the locality, is a notable feature and has a high aesthetic value making an important contribution to the landscape. River Red Gums are also considered local indigenous species.

The subject tree is a mature specimen, in good health and structure with no notable defects that indicate it can be considered an unacceptable risk to private safety. This tree is expected to offer a long useful life expectancy. However, this is subject to stable growing conditions being maintained.

### Property Damage

The main justification for the removal of the subject tree is the damage to the alfresco and garage area in particular water damage to the ceiling due to debris from the tree blocking the down pipes. The applicant has claimed this damage has occurred on a number of occasions. The canopy does not overhang the alfresco or garage area and is 2.8 metres at its closest point.

The applicant states a number of approaches to avoid water damage including ongoing maintenance, rain head, new roof flushing and debris filters over the down pipes have been used to avoid debris from the tree causing blockages. The applicant has claimed gutter guards cannot be considered because of the flat nature of the roof and the box gutters.

I do not believe I am appropriately qualified to determine if engineering solutions exist to resolve the damage experienced by the applicant. It is recommended an investigation be conducted by a suitably qualified structural engineer to confirm if reasonable alternative exists to allow the retention the subject tree and address the blockages to the down pipes. This investigation should also include the appropriateness of the roof design, the existing gutter capacity and if these factors have contributed to the damage experienced by the applicant.

Investigations on the internet discovered companies such as the "Leaf Man Gutter Guards" and "Leaf Busters" who claim gutter guards can be installed on flat roofs and box gutters.

In addition to the installation of gutter guards reduction pruning of the crown on the lower southern side as indicated on the image could be considered to reduce the level of debris falling onto the roof (refer Figure 3).

It is my belief a combination of gutter guards or similar and reduction pruning would reduce if not eliminate the damage experienced by the applicant.

## Appraisal (cont)

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Figure 3. Dotted line indicates the approximate location of the crown once pruning has been implemented.

## Objectives and Principles of Development Control

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The subject tree has been identified as a Significant Tree. The following comments have been made in regards to the relevant Objectives and Principles of Council's Development Plan (April 2016):

### Principle 346

- (a) Does the Significant Tree make an important contribution to the character or amenity of the local area?

Yes: The tree's location, height and spread of crown gives it a strong visual presence within the immediate locality. It is a large, mature tree, making it a prominent feature in the landscape.

- (b) Is the Significant Tree indigenous to the local area and is its species listed under the National Parks and Wildlife Act as a rare or endangered native species?

Yes: River Red Gums are considered a local indigenous native species to the locality, but are not listed under the National Parks and Wildlife Act as a rare or endangered.

- (c) Does the Significant Tree represent an important habitat for native fauna?

No: The subject tree would not be considered an important habitat for native fauna. No hollows suitable for nesting are present within the crown of the subject tree.

- (d) Is the Significant Tree part of a wildlife corridor or remnant area of native vegetation?

No: There is no visual evidence to indicate the tree is part of a wildlife corridor or part of an area of remnant native vegetation.

- (e) Is the Significant Tree important to the maintenance of biodiversity in the local environment?

No: The tree is not important to the maintenance of biodiversity in the local environment as the subject tree appears to have been planted some 40 plus years ago.

- (f) Does the Significant Tree form a notable visual element to the landscape of the local area?

Yes: The tree can be viewed from a number of vantage points from within the locality. The subject tree forms a notable visual element in the landscape of the local area, it is clearly visible from the street and surrounding properties for some distance as one travels from any direction away from the subject tree. It would be one of the largest trees within the immediate locality.

## **Objectives and Principles of Development Control (cont)**

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### **Principle 349(a)**

Significant trees should be preserved and tree damaging activity should not be undertaken unless one or more of the following applies:

- (1)(i) Is the Significant Tree diseased and its life expectancy short?

No: The tree is not diseased and it is expected to have a long useful life expectancy under existing environmental and site conditions and with the on-going management and maintenance by a qualified arborist.

- (1)(ii) Does the Significant Tree represent an unacceptable risk to public or private safety?

No: The tree currently represents a low risk to private safety at this time. It is my view, with on-going management and maintenance by a qualified arborist and ongoing monitoring, the likelihood of future branch failure is considered acceptable at this time.

- (1)(iii) Is the Significant Tree within 20 metres of a residential, tourist accommodation or habitable building and is it a bushfire hazard within a Bushfire Prone Area?

Not applicable

- (1)(iv) Is the Significant Tree shown to be causing or threatening to cause substantial damage to a substantial building or structure of value?

Damage to the ceiling of the alfresco / garage was observed. I do not believe I am appropriately qualified to determine if engineering solutions exist to resolve the damage experienced by the applicant. It is recommended an investigation be conducted by a suitably qualified structural engineer to confirm if reasonable alternative exists to allow the retention the subject tree and address the blockages to the down pipes.

- (2) It is demonstrated that all reasonable alternative development options and design solutions have been considered to prevent substantial tree-damaging activity occurring.

It has not been demonstrated that all reasonable alternative design solutions have been considered to prevent substantial tree-damaging activities occurring. Alternatives appear available to ensure tree-damaging activities do not occur to the subject tree.

## Conclusion

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I conclude that the subject tree, a mature River Red Gum possesses attributes worthy of protection. This tree provides a high level of amenity to the locality and forms a notable visual element to the landscape of the local area.

The subject tree is in good health and structure with no notable defects that would justify its removal at this time.

Damage to the ceiling of the alfresco / garage was observed. I do not believe I am appropriately qualified to determine if engineering solutions exist to resolve the damage experienced by the applicant. It is recommended an investigation be conducted by a suitably qualified structural engineer to confirm if reasonable alternative exists to allow the retention the subject tree and address the blockages to the down pipes.

Therefore, until the evidence from a structural engineer and a further assessment by Council is made, I wish to advise that the subject tree, a mature River Red Gum does not meet any of the relevant Principles of the City of Prospect's Development Plan (April 2016) that would justify its removal at this time.

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

Thank you for the opportunity to provide this report. Should you have any questions or require further information, please do not hesitate to contact me.



**Sam Cassar**

# **Appendix A Aerial Image**

Attachment



20170045L002A

22 May 2017

Ms Susan Giles  
Development Officer (Planning)  
City of Prospect  
PO Box 171  
Prospect SA 5082

Dear Susan,

### **DEVELOPMENT APPLICATION 127/17 FOR THE REMOVAL OF A TREE AT 68 ALBERT STREET PROSPECT**

As per your request I inspected the house and surrounds at 68 Albert Street Prospect on 22 May 2017 to determine if the tree located in the back yard of the property was causing or threatening to cause damage in the future to the existing house at the property.

I previously inspected the property back in 2013 for the same reasons as an application to remove the tree was lodged also back in 2013.

The reason for requesting the removal of the tree in the rear yard is that leaves from the tree are blocking up one of the two downpipes, the north eastern corner one, resulting in roof stormwater flowing over the gutter and into the ceiling space of the garage and alfresco area.

The house was inspected inside and out to note any cracking to the internal and external walls. The rear modern addition and the original house did not have any cracks to the existing walls.

Previously the rear doors had slight lift but this at the time was not considered to be substantial damage. The owners have not expressed any concern with this in the current application and no obvious change was noted on the site. They have also installed a root barrier.

The tree's roots are therefore not having any significant effect on the house with no substantial cracking or movements noted.

Based on the tree causing substantial damage to the house as a result of its roots drawing out soil moisture from under the house, the tree clearly is not doing this and it is not expected to have any major effect on the house under these circumstances in the future, particularly now that a root barrier has also been installed.

The overflow of stormwater into the ceiling that has caused the ceiling lining to be damaged and if left to deteriorate the damaged ceiling lining will eventually collapse.

The entering of water into the ceiling space will cause the ceiling lining to eventually lose strength and fail. Water in the ceiling space will also have an effect on the ceiling joists that support the ceiling but it is unlikely that enough water will pond in the ceiling to detrimentally affect the ceiling joists to the point that they could fail as the ceiling would normally collapse well before such an effect on the ceiling joists occurs.

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The cost to potentially have to replace the ceiling lining even in parts every few years would be substantial and hence could be considered to be substantial damage.

To overcome the flow of stormwater into the ceiling space from the box gutters to the edge of the garage and alfresco requires the removal of leaf litter from these areas on a very regular basis or the installation of a gutter guard that prevents the leaves from blocking up the downpipes.

They do have an overflow provided in the rain head to the box gutter at the north eastern corner of the garage and alfresco which will allow stormwater to overflow should the downpipe become blocked but during a storm if the downpipe is blocked the amount of roof stormwater coming off the roof will almost certainly exceed the water that can be held in the rain head whilst flowing out the overflow. This one downpipe takes all of the garage roof plus up to a half of the alfresco roof.

The owner advised that they have had the installation of gutter guard looked at but due to the flat roof and box gutter been advised that the installation of gutter guard would not solve the problem. The owner had been told that water would just build up on the roof and could then flow into the ceiling space under the roof sheets. As the roof is so flat this could easily occur if leaf litter builds up on the roof on top of any gutter guard.

The only option to prevent any damage even with gutter guard installed would be to regularly clean the roof of leaf litter.

The only simple solution to prevent damage to the ceiling is to remove the tree so leaves do not fall into the gutter and block it up.

Although I cannot justify the removal of the tree based on structural grounds I can appreciate the request for the removal of the tree to prevent the damage occurring to the ceiling of the garage and alfresco from roof stormwater flowing into the roof space.

Is it unreasonable to require the cleaning of leaf litters from gutters on almost a weekly basis? I cannot answer that question categorically but if I was in their situation I think I would be looking to get rid of the tree.

If you have any queries, please contact me on 8110 2220.

Yours faithfully

TONKIN CONSULTING



David NASH  
Building Surveyor/Senior Project Engineer

**AGENDA ITEM:** 6.1

**To:** Development Assessment Panel (DAP) on 5 June 2017

**From:** Susan Giles, Development Officer, Planning

**Proposal:** Four Storey Residential Flat Building Comprising 9 Dwellings (DA 050/408/2016)

**Address:** 219 Prospect Road, Prospect (CT5782/397)

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**SUMMARY:**

**Applicant:** Carmel & Cathryn Pearce

**Owner:** CT Pearce

**Planning Authority:** Council

**Mandatory Referrals:** Department of Planning, Transport and Infrastructure

**Independent Advice:** Independent Architect (Jenny Newman)

**Public Notification:** Category

**Representations:** Not applicable

**Respondent:** Not applicable

**Development Plan Version:** Consolidated 21 April 2016

**Zone and Policy Area:** Urban Corridor Zone (Transit Living Policy Area)

**Key Considerations:** Design and Appearance, Ground Level Activation, Landscaping, Setbacks, Car Parking

**Previously Considered:** 10 April 2017

**Recommendation:** **Approval, Subject to conditions**

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**ATTACHMENTS:**

Attachment 1 Revised Perspective plans

Attachments 2-7 Revised Plans

Attachments 8-9 Correspondence from Masterplan Town and Country Planners

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## **1. EXECUTIVE SUMMARY**

- 1.1 The Development Assessment Panel (DAP) previously considered a proposal for a four storey residential flat building comprising 9 dwellings. The proposal was deferred based on the buildings setback to the side boundaries, and the accessibility of the visitor car parking spaces.
- 1.2 The applicant has provided amended plans which illustrate revised setbacks for the balconies on Level 3, and modifications to the car park entrance. The revised setbacks of the balconies would reduce the bulk and scale of the building when viewed from adjoining properties. The changes to the car park entrance would provide appropriate measures for visitors accessing the car park.
- 1.3 The proposal remains for the construction of a Four Storey Residential Flat Building comprising 9 dwellings.
- 1.4 The amendments made do not warrant further mandatory referrals or independent advice, nor was public notification required. The amendments and additional information is considered to reasonably address the reasons for deferral and the proposal warrants development plan consent.

## **2. BACKGROUND**

- 2.1 The DAP previously considered the proposal at its meeting of 10 April 2017. At that meeting the DAP resolved to defer the application to allow the applicant to consider the:
  - Setback of the building to the side boundaries, including the balustrade for balconies on level 3;
  - Ease of access to visitor car parking spaces.
- 2.2 The report from the previous DAP meeting is available for viewing on the City of Prospect website ([www.prospect.sa.gov.au](http://www.prospect.sa.gov.au)).

## **3. DISCUSSION**

### **3.1 Setbacks**

- 3.1.1 The proposal plans have been revised with the balconies on the third level being reduced. Previously, the balconies had a combined length of 18m and setback 500mm to the northern and southern boundaries.
- 3.1.2 The revisions include a small balcony adjacent Bed 1 near the rear of the building, and balconies adjacent the living areas, located at the front of the site. The balconies would have a combined length of 6.1m and setback 800mm from the northern and southern boundaries. The dwellings would still be provided with the minimum private open space desired. As a result of the balconies being reduced, the previously proposed sliding doors have been amended to windows. The remainder of the building remains unchanged (refer **Attachments 1, 4-6**).
- 3.1.3 The reduction of the balconies on level 3 would reduce the scale of building and lessen the impact to adjoining properties, in the event that the adjoining allotments are developed. Overall, the siting of the building on the subject land is considered appropriate.

### 3.2 Car parking

3.2.1 The revised plans illustrate modifications to the entrance of the ground floor car park. The changes include two roller doors for separate ingress and egress to the carpark, a traffic island with intercom and keypad, and signage that would be located between the two roller doors. The sign would display if the visitor car parking spaces are vacant (refer **Attachments 3-6**).

3.2.2 As a result of the revisions, the proposal is considered to provide visitors with a reasonable level of accessibility upon accessing the car park.

## 4. **CONCLUSION AND RECOMMENDATION**

4.1 Summarised briefly, the applicant has:

1. *Reduced the size of the north and south-facing balconies on the third level;*
2. *Increased the setback of the north and south-facing balconies on the third level;*
3. *Amended the car park entrance to accommodate mechanisms to ease the access to the visitor car parking spaces.*

4.2 In line with the earlier discussion in this report, the application is considered to be sufficiently consistent with the relevant provisions of the Prospect (City) Development Plan and it is thus recommended:

It is recommended:

That with reference to the relevant provisions of the Prospect (City) Development Plan, the zoning of the land within which the proposed development is situated and the locality within which the land is situated, the Panel resolves that development application 050/408/2016 is not seriously at variance with the Development Plan and as such a decision shall be made on the merits of the application; and

That pursuant to the *Development Act 1993*, as amended, Development Plan Consent be approved to DA 050/408/2016 from Carmel & Cathryn Pearce for Four Storey Residential Flat Building Comprising 9 Dwellings at 219 Prospect Road, Prospect (CT5782/397), subject to the following Reserve Matters, Conditions and notes:

#### **Reserved Matters:**

1. A detailed stormwater management plan shall be provided that, to the satisfaction of Council, provides evidence that all dwellings are suitably protected from 1 in 100 year ARI storm events and that post-development outflow rates from the site will match pre-development rates in 1 in 20 ARI storm events. The location and capacity of any on-site detention tanks shall be clearly described.

#### **Conditions:**

1. The development shall take place in accordance with plans and details stamped by Council relating to Development Application Number 050/408/2016, except as modified by any conditions detailed herein. All works detailed in the approved plans and required by conditions are to be completed prior to the occupation of the approved development.
2. All building materials and finishes are integral to the quality of the design approved herein and shall be in accordance with the 'External Finishes Schedule' noted on the herein endorsed elevation plans (page 5 of 7 and page 6 of 7), Amended 20/04/2017, job no. PR\_PROSPECT\_APTMNTS.

3. All driveways, parking and manoeuvring areas must be formed, surfaced with concrete, bitumen or paving and maintained to the reasonable satisfaction of Council. Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of materials or goods including waste products and refuse. The obsolete crossover and/or any portion of crossover that is not required for the subject development shall be reinstated to Council standard kerb and gutter at the applicant's cost prior to occupation of the completed development.
4. Air-conditioning units and solar hot water heaters shall be provided with screening devices designed to complement the colours, materials and finishes of the building approved herein, and shall be sited to adequately screen the units from view from neighbouring properties and public land (roadways) to the reasonable satisfaction of Council.
5. To maximise the efficiency of waste recycling:
  - a) Provision shall be made for the separation of recyclable materials for collection and recycling, including paper, cardboard, glass and plastic containers, tins, and any other plastic that 'holds its shape';
  - b) Separate provision shall be made for the collection of food waste (food organics) and food-contaminated cardboard, paper or paper products, which are to be collected for composting; and
  - c) Paper attached to plastic, wax paper or chemically-treated/gloss cardboard will not be included with the materials collected for composting.
6. Any difference in finished ground levels between the subject site and adjoining sites at the boundary shall be retained by an appropriate wall or plinth of masonry, concrete or similar construction. Retaining walls must be designed to accepted engineering standards and will not be of timber construction if retaining a difference in ground levels exceeding 200 mm.
7. The landscaping shall be planted prior to occupancy of the development, and maintained at all times to the reasonable satisfaction of Council and to ensure appropriate lines of sight for vehicles and pedestrians. An automated drip irrigation or similar watering system shall be established and maintained to ensure that sufficient water is available to satisfy the needs of the landscaping species selected.
8. Footpaths adjacent to the site are to be kept in a safe condition for pedestrians at all times during construction works. All driveways and footpaths traversed by vehicles using the site are to be maintained in a reasonable condition for the duration of the works, and are to be reinstated to the satisfaction of Council on completion of the works.

All works on Council land shall be conducted to Council's specification, with all works to be bunted off safely and pedestrian safety to be maintained throughout the construction period. Plantings will also need to be undertaken in line with council specifications in terms of sight distance interference and safety to the community (thorns/poisonous plantings). Plans displaying all relevant details of the Road/Kerbing/Footpath Works shall be submitted to the Assets and Infrastructure Officer for approval prior to the commencement of any such works.

***The following conditions have been imposed by the Department of Planning, Transport and Infrastructure in accordance with Section 37(7) of the Development Act 1993:***

1. The access shall be a minimum of 6.0 metres wide at the Prospect Road property boundary and extend into the site at this width for a minimum of 15.0 metres (i.e. 6.0 metres beyond the roller door) in order ensure that the access can safely cater for simultaneous tow-way vehicle movements. The roller door opening shall be a minimum of 6.0 metres wide to enable unimpeded entry and exit movements.

2. The access point shall be suitably flared to Prospect Road to allow convenient ingress and egress movement in order to minimise disruption to the free flow of traffic.
3. The access shall be located in order to achieve a minimum of 1.0 metres separation from the stobie pole adjacent to the southern boundary.
4. Pedestrian sightlines at the access shall be in accordance with AS/NZS2890.1:2004.
5. All vehicles shall enter and exit the site in a forward direction.
6. All car parking shall be designed in accordance with AS/NZS 2890.1:2004.
7. The common access and all manoeuvring areas shall be kept clear of all impediments to vehicle movements (e.g. parked cars, bins etc).
8. All landscaping located along the Prospect Road frontage forward of the built form shall be low growing (<1 metres) or open in nature so as not to restrict sight lines at the access.
9. The redundant crossover shall be closed and reinstated to Council's specification kerb and gutter at the applicant's cost prior to habitation of the dwellings.
10. No stormwater from this development is permitted to discharge on-surface to Prospect Road. In addition, any existing drainage of the road shall be accommodated by the development and any alterations to road drainage infrastructure as a result of this development shall be at the expense of the developer.

**Advisory Notes:**

- (1) Pursuant to Section 86(1)(a) of the Development Act, 1993, you have the right of appeal to the Environment, Resources and Development Court against either 1) a refusal of consent or 2) any condition(s) which have been imposed on a consent. Any such appeal must be lodged with the Court within two (2) months from the day on which you receive this notification or such longer period as may be allowed by the Court.

The Environment, Resources and Development Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide SA 5000 (Postal Address: GPO Box 2465, Adelaide SA 5001).

- (2) The development plan consent granted herein is effective for a period of twelve (12) months from the date of the decision. Unless Council extends this period, building rules consent is required within this time or the consent will lapse.

Any request for an extension of the operative period of the consent must be submitted to Council in writing, accompanied by the applicable fee.

- (3) Further application pursuant to the Local Government Act shall be made to the Infrastructure Assets and Environment Department for the proposed crossover prior to construction activities occurring.

Road/Kerbing/Footpath Works will need to be inspected by an Assets and Infrastructure Officer to determine they have met all relevant requirements. All work including line marking will be the responsibility of the applicant as will the reinstatement of any damaged Infrastructure / Services related to these works. All works will be carried out at the cost to the applicant.

- (4) Prior to the commencement of construction of the development herein approved, it is strongly recommended that you employ the services of a licensed Land Surveyor to carry out an identification survey of the subject land and to peg the true boundaries, to ensure that building work will be either on the true boundaries or the specified distance from the true boundaries of the subject land, as the case may be.

Failure to correctly site the development on the land in accordance with the plans approved herein would constitute a breach of the *Development Act 1993*. Any amendments required to the approved plans as a result of the survey are to be submitted to Council for approval prior to works commencing.

- (5) You are encouraged to consult with adjoining property owners before commencing any work, to assist in minimising nuisance or inconvenience caused during construction.
- (6) You are required to give formal notification to, and consult with, the adjoining property owner if you are removing, replacing or altering an existing fence or building a freestanding wall along the common boundary that would, for all purposes, be a dividing fence (Section 5 of the *Fences Act 1975*).
- (7) During construction of the development approved herein, measures will be implemented to ensure that the construction works do not result in an unreasonable impact on occupiers of adjacent properties or pollution of existing infrastructure through drag-out or stormwater runoff. Measures shall include as necessary:
- A hard surface and controlled washing zone at the entry/exit points to the site, designed to reduce the potential for mud and material dragged out by construction vehicles; and
  - Containment of stormwater run-off within the site, which if being discharged into the stormwater system will be filtered to the satisfaction of Council; and
  - Reduction of the potential for dust and other airborne particles by the use of water sprinklers and/or other means of containment; and
  - The establishment of an appropriate storage compound for waste materials and litter. No building waste material shall be stored outside of the storage compound or similar industrial bin; and
  - All mechanical equipment shall be used in a manner to minimise the potential for noise pollution and ensure compliance with the requirements of the Environment Protection (Noise) Policy.
- (8) To ensure compliance with applicable standards as described in the Environment Protection (Noise) Policy established under the Environment Protection Act, construction activities should only take place between the hours of 7:00am and 7:00pm, Monday to Saturday inclusive, and not on Sundays or public holidays.
- (9) The construction of the building shall be undertaken in accordance with the Ministers Specification SA78B – Construction requirements for the control of external sound. Compliance with the Minister’s Specification would be required as part of the Building Code of Australia (BCA).
- (10) National Broadband Network (NBN): The National Broadband Network is being rolled out across the City of Prospect. It is recommended that you consider your future connection to the optical fibre network prior to commencing works. Please visit [www.nbnco.com.au](http://www.nbnco.com.au) for further details on how to get connected.
- (11) That the Metropolitan Adelaide Road Widening Plan shows that a strip of land up to 4.5 metres in width may be required from the Prospect Road frontage of this site for possible future road purposes. The consent of the Commissioner of Highways under the

Metropolitan Adelaide Road Widening Plan Act is required to all building works on or within 6.0 metres of the possible requirements. As the development encroaches in these areas, the required consent form shall be completed and forwarded to DPTI with three copies of the approved site plan for process. Consent can be anticipated.

- (12) As part of the Integrated Transport and Land use Plan, the Prospect*LINK* (Tram) along Prospect Road is proposed in the next 30 years. As par to the Prospect*LINK* corridor, a number of potential access impacts for Prospect Road and therefore the proposed development may occur.



FRONT PERSPECTIVE VIEW (LOOKING SOUTH-EAST)



FRONT PERSPECTIVE VIEW (LOOKING NORTH-EAST)



AERIAL PERSPECTIVE VIEW (LOOKING SOUTH-EAST)

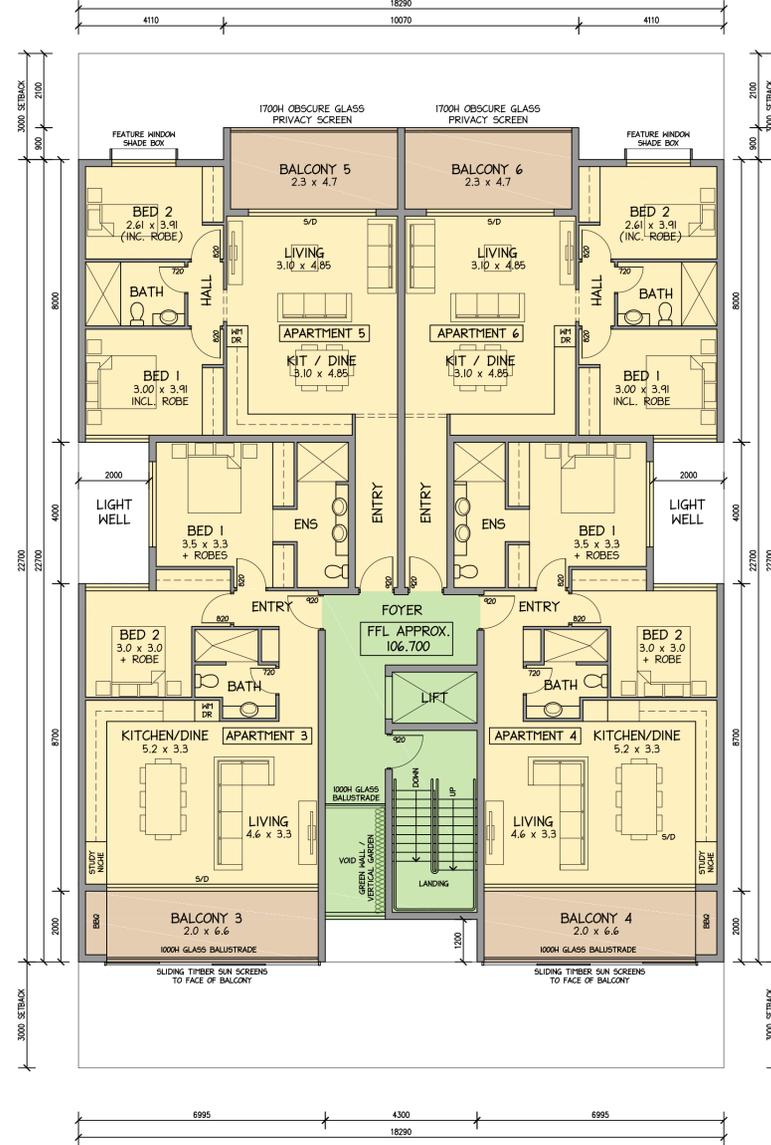
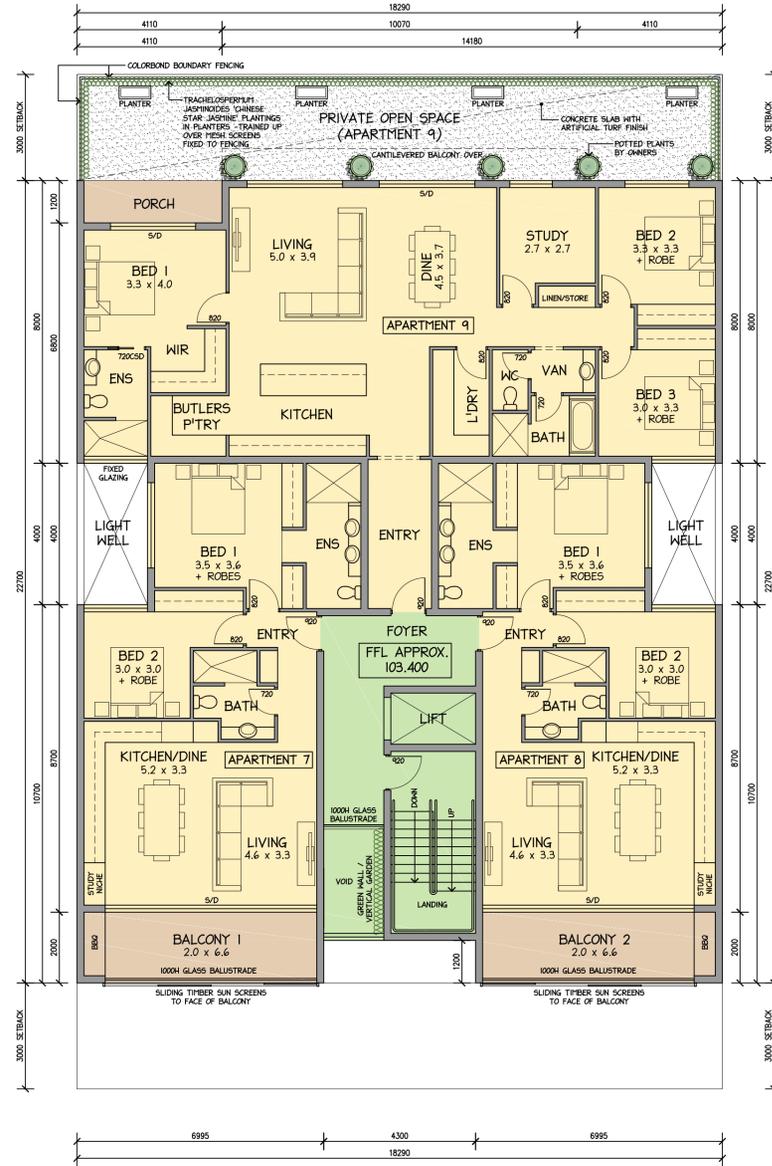
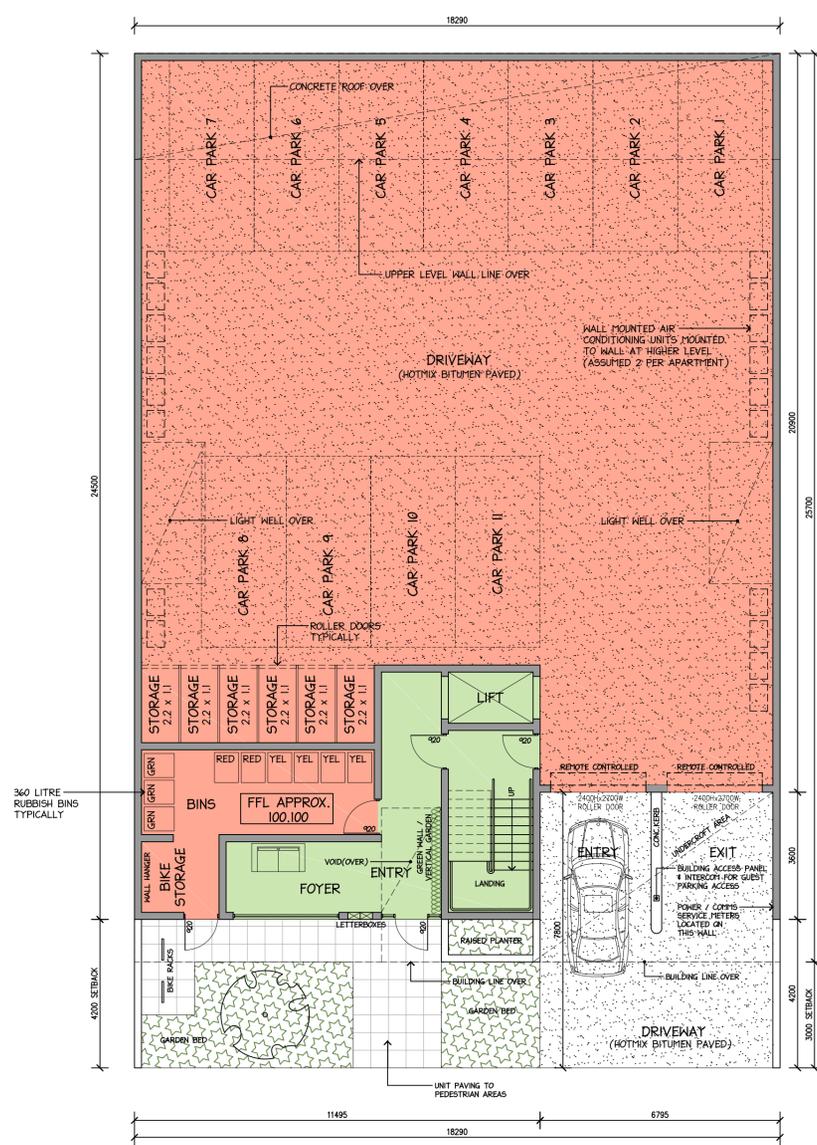


STREET LEVEL PERSPECTIVE VIEW TOWARDS MAIN ENTRANCE

**PROPOSED RESIDENTIAL APARTMENTS  
AT 219 PROSPECT ROAD, PROSPECT  
FOR C. & C. PEARCE**



NOTE:  
GLAZING WITHIN 3.0M OF ADJACENT BOUNDARIES WILL BE PROTECTED BY A COMBINATION OF THE FOLLOWING SYSTEMS IN FULL ACCORDANCE WITH NCC REQUIREMENTS:  
- MALL NETTING SPRINKLERS TO FIXED GLASS  
- OR SELF-CLOSING OPENINGS  
- +400/- FRL FIRE RATED DOORS  
- +400/- FRL SELF-CLOSING FIRE WINDOWS

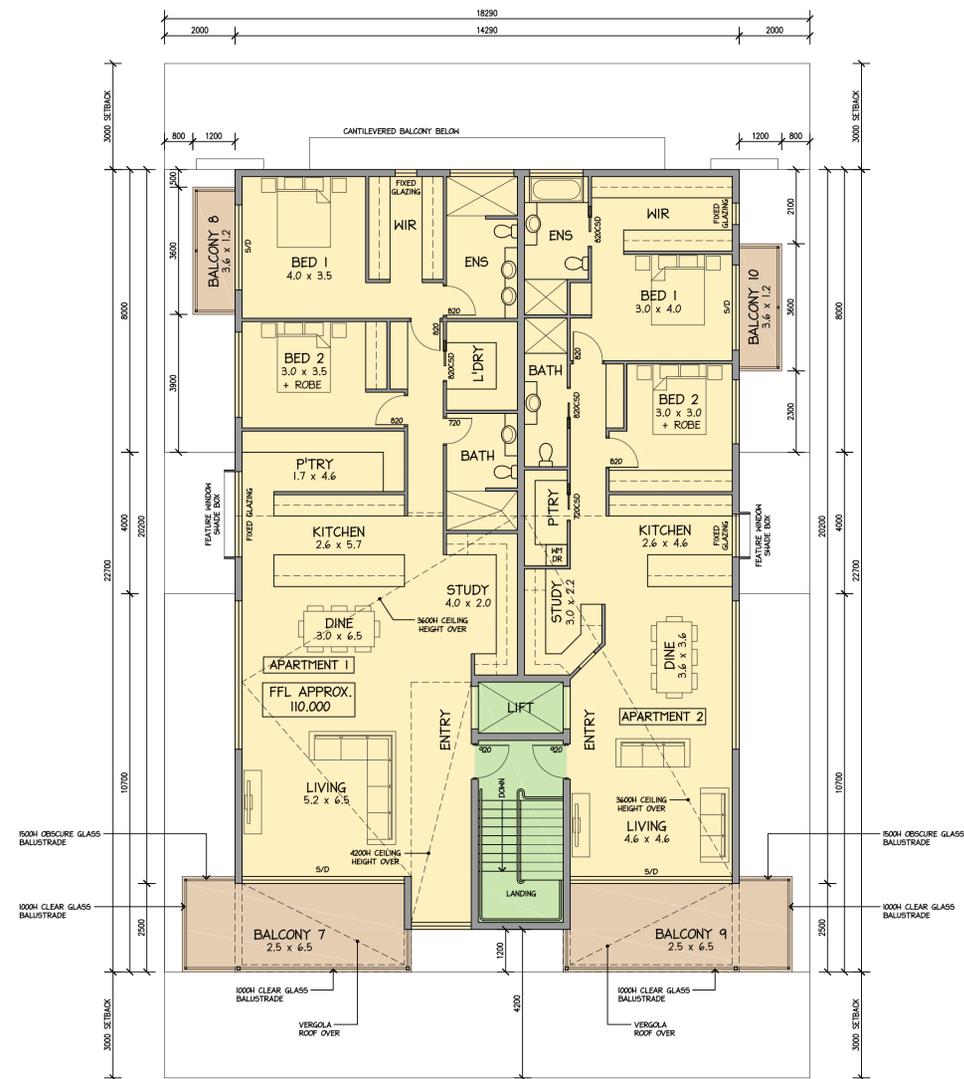


- APARTMENTS
- PRIVATE OPEN SPACE
- CIRCULATION
- CAR PARK / UTILITY

VARIOUS AMENDMENTS 20-04-17 BPL  
AMENDMENT: DATE: DRAWN:  
**DEVELOPMENT APPLICATION**  
CLIENT:  
C. & C. PEARCE  
AT:  
219 PROSPECT ROAD  
PROSPECT  
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DATE: 22.03.17 DRAWN: Bmc JOB NO: PR\_PROSPECT\_APTMNTS PAGE 3 OF 7

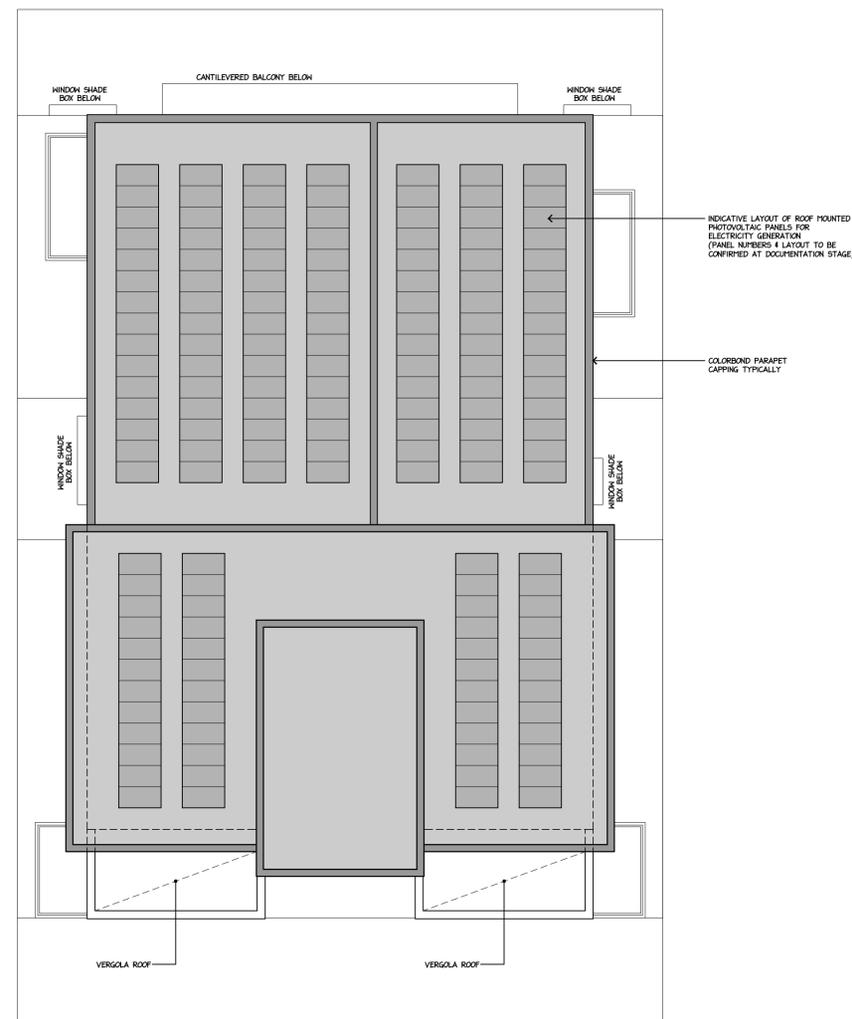


NOTE:  
GLAZING WITHIN 3.0M OF ADJACENT BOUNDARIES  
WILL BE PROTECTED BY A COMBINATION OF THE  
FOLLOWING SYSTEMS IN FULL ACCORDANCE WITH  
NCC REQUIREMENTS:  
• MALL NETTING SPRINKLERS TO FIXED GLASS  
• OR SELF-CLOSING OPENINGS  
• -60/20 FRL FIRE RATED DOORS  
• -60/- FRL SELF-CLOSING FIRE WINDOWS



LEVEL 3 FLOOR PLAN  
SCALE 1:100

AREAS (m <sup>2</sup> )	
APARTMENT 1	: 158.6
APARTMENT 2	: 117.5
CIRCULATION	: 18.6
BALCONY 7	: 16.3
BALCONY 8	: 4.3
BALCONY 9	: 16.3
BALCONY 10	: 4.3
<b>TOTAL</b>	<b>: 335.9</b>



ROOF PLAN  
SCALE 1:100

- APARTMENTS
- PRIVATE OPEN SPACE
- CIRCULATION

VARIOUS AMENDMENTS 20-04-17 BPC  
AMENDMENT: DATE: DRAWN:

**DEVELOPMENT APPLICATION**

CLIENT:  
C. & C. PEARCE

AT:  
219 PROSPECT ROAD  
PROSPECT

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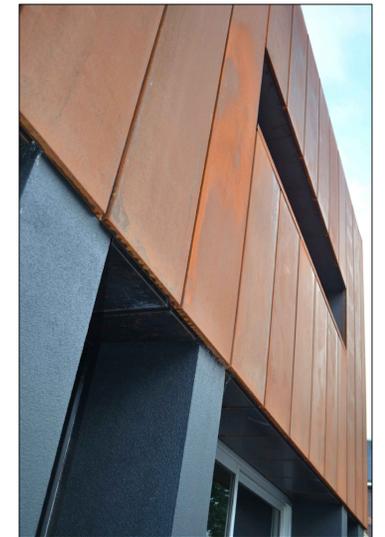
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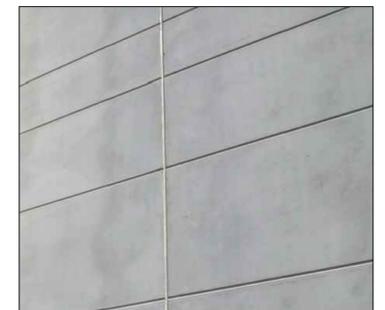
SOUTH ELEVATION  
SCALE 1:100



NORTH ELEVATION  
SCALE 1:100



CASSETTE WEATHERED COPPER CLADDING



PRECAST CONCRETE WALL PANELS



JAMES HARDIE 'STRIA' SPLAYED 255mm PROFILE

EXTERNAL FINISHES SCHEDULE

-  PRECAST CONCRETE WALL PANELS  
COLOUR: SEALED NATURAL CONCRETE FINISH
-  JAMES HARDIE 'STRIA' SPLAYED 255mm PROFILE  
COLOUR: DULUX NAMIADJI
-  CASSETTE WEATHERED COPPER CLADDING  
(OR PRE RUSTED STEEL)  
COLOUR: NATURAL FINISH
-  TEXTURE COATED HARDITEX CLADDING  
COLOUR: DULUX NATURAL WHITE
-  POWDERCOATED ALUMINIUM WINDOW FRAMING  
& COLORBOND ROOF CAPPING  
COLOUR: COLORBOND MONUMENT
-  COLORBOND 'GOOD NEIGHBOUR' FENCING  
COLOUR: COLORBOND WOODLAND GREY
-  SANDSTONE STONE VENEER  
COLOUR: NATURAL FINISH (STRETCHER BOND)

VARIOUS AMENDMENTS 20-04-17 BMc  
AMENDMENT: DATE: DRAWN:

DEVELOPMENT APPLICATION

CLIENT:  
C. & C. PEARCE

AT:  
219 PROSPECT ROAD  
PROSPECT

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DATE: 22.03.17 DRAWN: BMc JOB NO: PR\_PROSPECT\_AP10M15 PAGE 5 OF 7



SANDSTONE STONE VENEER CLADDING - STRETCHER BOND



COLORBOND FENCING - WOODLAND GREY COLOUR



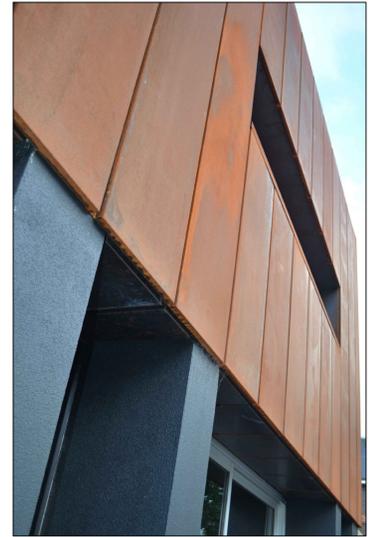
MODWOOD PRIVACY SCREEN IN BLACK BEAN COLOUR



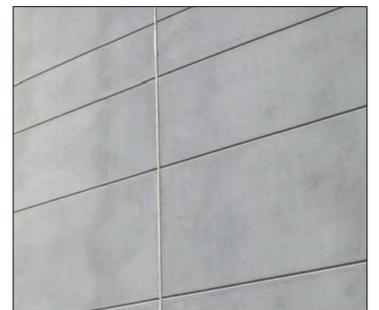
WEST ELEVATION  
SCALE 1:100



EAST ELEVATION  
SCALE 1:100



CASSETTE WEATHERED COPPER CLADDING



PRECAST CONCRETE WALL PANELS



JAMES HARDIE 'STRIA' SPLAYED 255mm PROFILE

EXTERNAL FINISHES SCHEDULE

- PRECAST CONCRETE WALL PANELS  
COLOUR: SEALED NATURAL CONCRETE FINISH
- JAMES HARDIE 'STRIA' SPLAYED 255mm PROFILE  
COLOUR: DULUX NAMADJI
- CASSETTE WEATHERED COPPER CLADDING  
(OR PRE RUSTED STEEL)  
COLOUR: NATURAL FINISH
- TEXTURE COATED HARDITEX CLADDING  
COLOUR: DULUX NATURAL WHITE
- POWDERCOATED ALUMINIUM WINDOW FRAMING  
& COLORBOND ROOF CAPPINGS  
COLOUR: COLORBOND MONUMENT
- COLORBOND 'GOOD NEIGHBOUR' FENCING  
COLOUR: COLORBOND WOODLAND GREY
- SANDSTONE STONE VENEER  
COLOUR: NATURAL FINISH (STRETCHER BOND)



SANDSTONE STONE VENEER CLADDING - STRETCHER BOND



COLORBOND FENCING - WOODLAND GREY COLOUR



MODWOOD PRIVACY SCREEN IN BLACK BEAN COLOUR

VARIOUS AMENDMENTS 20-04-17 BMc  
 AMENDMENT: DATE: DRAWN:  
**DEVELOPMENT APPLICATION**  
 CLIENT:  
 C. & C. PEARCE  
 AT:  
 219 PROSPECT ROAD  
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JUNE 21st - 9:00am

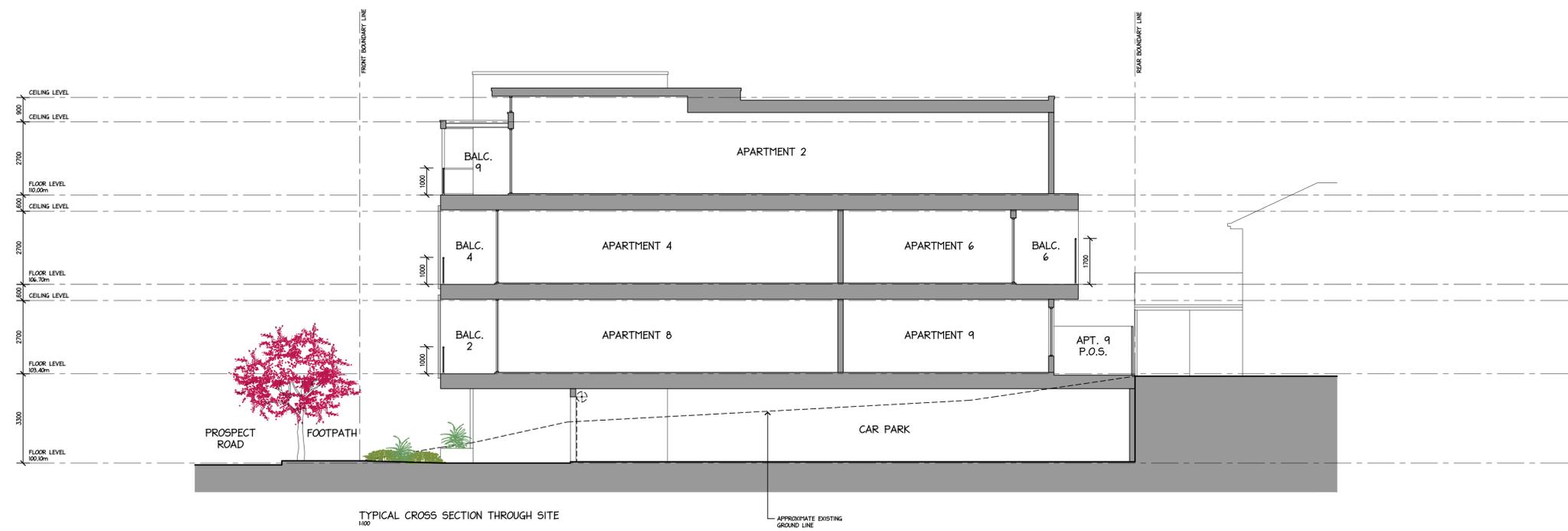


JUNE 21st - 12:00pm



JUNE 21st - 3:00pm

SHADOW DIAGRAMS  
NOT TO SCALE





26 April 2017

City of Prospect  
128 Prospect Road  
PROSPECT SA 5082

Attention: Susan Giles

Dear Ms Giles

**Re: Four Storey Residential Flat Building Comprising Nine Apartments  
at 219 Prospect Road, Prospect (DA 050/408/2016)**

MasterPlan has been engaged by Mrs CM Pearce to review and provide a response to the Development Assessment Panel's resolution to defer to the proposed development at its meeting on the 10 April 2017. The Development Assessment Panel resolved:

*The application is deferred to a subsequent meeting of the Development Assessment Panel, to enable the applicant to address the following matters:*

- *setback of the building to the side boundaries, including the balustrade for balconies on Level 3; and*
- *ease of access to visitor car parking spaces.*

The applicant has amended the plans in response to the Panel's resolution and made the following specific amendments:

- the inclusion of a traffic island with an intercom and keypad to allow visitors access to the visitor car parking spaces within the secure car parking area. Visitors will either be provided with a code for access by a resident or have direct communication via an intercom to the occupant's apartment where remote access can be provided to the car parking area. In addition, and to identify whether the visitor spaces are available, signage on a central pillar between what will now comprise of two individual garage doors will identify if the visitor spaces are vacant;



- the extent of balconies at Level 3 have been significantly reduced, substantially reducing the extent of extended screening above the Level 2 parapet of the building and presenting the 2.0 metre setback to the side boundaries for Level 3. A small 1.2 metre balcony has been maintained adjacent to Bedroom 1 for both Apartment 1 and 2 at the rear of the site, with obscure glass screening setback a minimum of 800 millimetres from the side boundary wall. The small balcony increases the amenity for the Master Bedroom without resulting in a visually significant departure from the Development Plan setback guidelines; and
- consequential amendments to the north and south facing windows for Bedroom 2 and the dining room for each apartment result in a change from sliding doors to sliding windows with a sill height of 1.2 metres above the finished floor level.

We respectfully attach the amended plans for the consideration of the Development Assessment Panel at their next available meeting and submit that the amendments appropriately address the reasons for deferral.

On behalf of our client we advise that we will be in attendance at the Development Assessment Panel when the matter is considered in order to respond to any queries that the Panel may have when giving due consideration to the proposed development.

Yours sincerely

**Greg Vincent**  
MasterPlan SA Pty Ltd

enc: Amended Plans.  
cc: Mr Robin Pearce.

**AGENDA ITEM:** 6.2

**To:** Development Assessment Panel (DAP) on 5 June 2017

**From:** Matt Atkinson, Acting Manager – Development Services  
(Consultant Planner from MasterPlan)

**Proposal:** Three-storey residential flat building comprising six (6) dwellings  
(DA 050/5/2016)

**Address:** 162 Churchill Road, Prospect (CT 5480/313)

---

**SUMMARY:**

**Applicant:** House and Land SA

**Owner:** Scratch Pad Investments Pty Ltd

**Planning Authority:** Council

**Mandatory Referrals:** Department of Planning, Transport and Infrastructure

**Independent Advice:** Independent Architect (Jenny Newman)

**Public Notification:** Category 1

**Representations:** Not applicable

**Respondent:** Not applicable

**Development Plan Version:** Consolidated 12 February 2015

**Zone and Policy Area:** Urban Corridor Zone (Boulevard Policy Area)

**Key Considerations:** Waste Management, On-site Car Parking, Building Materials,  
Quality of Landscaping, Internal Dwelling Configuration

**Previously Considered:** 10 April 2017

**Recommendation:** **Approval, subject to conditions**

---

**ATTACHMENTS:**

Attachments 1-13 Revised Plans

---

## **1. EXECUTIVE SUMMARY**

- 1.1 The Development Assessment Panel (DAP) previously considered a proposal for a three-storey residential flat building comprising seven (7) dwellings. The proposal was deferred based on a range of issues that required attention, including waste management, on-site car parking, building materials, the quality of landscaping and the internal dwelling configuration.
- 1.2 The applicant has provided amended plans, which address the Panel's reasons for deferral, including a reduction in the number of dwellings from seven (7) to six (6), which has enabled additional space for a bin storage and waste collection area, two (2) additional on-site visitor car parking spaces and amended landscaping areas. The applicant has also amended the external building materials and altered the internal floor plans.
- 1.3 Whilst the proposed amendments have reduced the number of dwellings from seven (7) to six (6), the proposal remains one for the construction of a three-storey residential flat building of similar proportions and external appearance. As such, it is considered that the essential nature of the development has not changed and that the proposed amendments can be determined on the current Development Application (i.e. not significant enough of a change to warrant a new application).
- 1.4 The amendments made do not warrant further mandatory referrals or independent advice, nor was public notification required. The amendments and additional information are considered to reasonably address the reasons for deferral and the proposal warrants development plan consent.

## **2. BACKGROUND**

- 2.1 The DAP previously considered the proposal at its meeting held on 10 April 2017. At that meeting, the DAP resolved to defer the application to allow the applicant an opportunity to address:
- A resolution of waste management storage and collection locations and methodologies;
  - The shortfall in car parking provided on-site, noting that an opportunity exists for a contribution to be made to Council's Off Street Car Parking Development Fund to assist in resolving this concern;
  - The quality of the materials used on the proposed building, including details of the proposed balcony balustrade treatment;
  - The quality of landscaping, ensuring that an integrated approach results in a well-resolved, high quality and durable landscape solution within the driveway and forward of the building; and
  - The internal configuration of the dwellings, with particular regard to the size and layout of studies shown within each dwelling.
- 2.2 The report from the previous DAP meeting is available for viewing on the City of Prospect website ([www.prospect.sa.gov.au](http://www.prospect.sa.gov.au)).

## **3. DISCUSSION**

### **3.1 Waste Management**

- 3.1.1 The reduction in the number of dwellings from seven (7) to six (6) has reduced the building footprint and provided an opportunity for a bin enclosure to be provided adjacent to the Churchill Road frontage.

- 3.1.2 The proposed bin enclosure will accommodate an 1100 litre general waste bin and a 1500 litre green waste bin for communal use. The communal bins will be emptied from the kerbside.
- 3.1.3 The proposed bin enclosure will be screened from public view by a 1200mm high timber slat front fence and a landscaping bed between the fence and the Churchill Road verge. The Applicant has verbally advised that the bin storage area will be screened on all sides, although detail has not been provided on the amended plans.
- 3.1.4 Individual recycling bins are proposed for each dwelling, which will be stored in the ground level private open space areas and wheeled to the verge for collection. Access to the ground level private open space is provided through the proposed garages to enable the bins to be wheeled to the kerbside.
- 3.1.5 If the Panel determine to approve the amended plans, it is recommended that a condition be imposed requiring the bin storage area be screened on all sides with a timber slat screen to match the proposed front fence, to the reasonable satisfaction of the Council or its delegate.

## 3.2 Car parking

- 3.2.1 The reduction in the number of dwellings from seven (7) to six (6) has reduced the building footprint and provided an opportunity for two (2) additional on-site visitor car parking spaces to be provided.
- 3.2.2 The internal dwelling configuration has been altered such that the dwellings are genuine two (2) bedroom townhouses, hence reducing the required car parking rate prescribed within Table Pr/5 from 1.25 spaces per dwelling to 1 space per dwelling. The proposed development now complies with the relevant Development Plan car parking rate for occupants.
- 3.2.3 The addition of two (2) shared on-site visitor car parking spaces meets the prescribed rate of 0.25 spaces per dwelling, prescribed within Table Pr/5. The proposed development now also complies with the relevant Development Plan car parking rate for visitors.
- 3.2.4 Turning circle templates have been applied to the additional spaces and vehicle manoeuvring is considered to be safe and convenient, consistent with the relevant Australian Standard.
- 3.2.5 The width of the Council verge, the provision of landscaping and the location of the proposed bin enclosure provide an adequate setback between the proposed visitor car parking spaces and Churchill Road, to ensure that there will not be any unreasonable conflict between vehicles reversing from the visitor spaces and vehicles entering the site.

## 3.3 Building materials

- 3.3.1 The proposed building materials have been amended to improve the appearance of the building by creating some additional articulation. Most notably, the applicant has introduced 'Fielders Interlocking Panels' at the second floor level, which will contrast, yet complement, the face brick at ground level and rendered masonry at first floor level. A photograph of the proposed material is provided on the amended elevations.

### 3.4 Landscaping

- 3.4.1 The landscaping associated with the proposed development has been altered to facilitate the additional on-site car parking spaces and the bin storage area.
- 3.4.2 The common landscaping areas along each side of the allotment have been extended commensurate with the additional building setback associated with the reduced building footprint.
- 3.4.3 The common landscaping that is proposed along the Churchill Road frontage has reduced in width to accommodate an expanded bin storage area, albeit that the landscaping remains on the Churchill Road side of the proposed front fence, which will provide a reasonable appearance when viewed from Churchill Road.
- 3.4.4 The proposed landscaping schedule includes a range of small trees (Crepe Myrtles), shrubs (Westringia Fruticosa (Native Rosemary), Correa Alba (White Correa), hedges (Viburnum Tinus) and ground covers (Convolvulus Cneorum (Silverbush).
- 3.4.5 Each of the dwellings are provided with landscaping within their ground level private open space areas.

### 3.5 Internal floor layout

The internal dwelling configuration has been altered such that the dwellings are now genuine two (2) bedroom townhouses. This has been achieved by removing the studies and utilising an open 'retreat' or stair landing. The opportunity to have a desk and within the 'retreat' remains, without it being able to be used as a bedroom (without significant modifications).

## 4. **CONCLUSION AND RECOMMENDATION**

4.1 Summarised briefly, the applicant has:

1. Reduced the proposed number of the dwellings on the site from seven (7) to six (6), which has reduced the footprint of the building and increased the front setback;
2. Introduced a bin storage area adjacent to Churchill Road for communal general and green waste storage and collection;
3. Provided two (2) additional visitor on-site car parking spaces, which now complies with the rates contained in Table Pr/5 of the Development Plan;
4. Amended the proposed external building materials to include 'Fielders Interlocking Panels' at the second floor level;
5. Made alterations to the proposed landscaping to complement the proposed amendments. The proposed species are considered to be acceptable; and
6. Altered the internal configuration of the dwellings by removing the studies (which could previously be used as third bedrooms), such that the provision of occupant car parking is now acceptable.

4.2 In line with the earlier discussion in this report, the proposal is considered to be sufficiently consistent with the relevant provisions of the Prospect (City) Development Plan and it is thus recommended:

It is recommended:

That with reference to the relevant provisions of the Prospect (City) Development Plan, the zoning of the land within which the proposed development is situated and the locality within which the land is situated, the Panel resolves that development application 050/5/2016 is not

seriously at variance with the Development Plan and as such a decision shall be made on the merits of the application; and

That pursuant to the *Development Act 1993*, Development Plan Consent be approved to DA 050/5/2016 by House and Land SA for a three-storey residential flat building comprising six (6) dwellings at 162 Churchill Road, Prospect (CT 5480/313), subject to the following Reserve Matters, Conditions and notes:

**Reserved Matters:**

1. A detailed stormwater management plan shall be provided that, to the satisfaction of Council, provides evidence that all dwellings are suitably protected from 1 in 100 year ARI storm events and that post-development outflow rates from the site will match pre-development rates in 1 in 20 ARI storm events. The location and capacity of any on-site detention tanks shall be clearly described.

**Conditions:**

1. The development shall take place in accordance with plans and details stamped by the Council relating to Development Application Number 050/5/2016, except as modified by any conditions detailed herein. All works detailed in the approved plans and required by conditions are to be completed prior to the occupation of the approved development.
2. All first and second floor windows, with the exception of those directly facing Churchill Road or the first floor balconies (which are to be protected by obscure glass balustrades), shall incorporate fixed obscure glazing in all portions of the windows less than 1.5 metres above the internal floor level.
3. The bin storage area, herein approved, shall be screened from view by a timber slat screen to match the proposed front fence, to the satisfaction of the Council or its delegate.
4. All driveways, parking and manoeuvring areas must be formed, surfaced with concrete, bitumen or paving, and be properly drained. The surfacing of the driveway and drainage shall be maintained to the reasonable satisfaction of Council thereafter.
5. The materials and finishes are an essential component of the design and shall be established in accordance with those indicated on the approved plans.
6. Air-conditioning units and solar hot water heaters shall be provided with screening devices designed to complement the colours, materials and finishes of the building approved herein, and shall be sited to adequately screen the units from view from neighbouring properties and public land (roadways) to the reasonable satisfaction of Council.
7. Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of materials or goods including waste products and refuse.
8. The landscaping shall be planted prior to occupancy of the development, and maintained at all times to the reasonable satisfaction of Council and to ensure appropriate lines of sight for vehicles and pedestrians. Mature trees shall be no less than 2.0m in height at time of planting. The applicant or the persons making use of the subject land shall cultivate, tend and nurture the landscaping, and shall replace any landscaping that becomes diseased or dies. An automated drip irrigation or similar watering system shall be established and maintained to ensure that sufficient water is available to satisfy the needs of the landscaping species selected.
9. Footpaths adjacent to the site are to be kept in a safe condition for pedestrians at all times during construction works. All driveways and footpaths traversed by vehicles using the site

are to be maintained in a reasonable condition for the duration of the works, and are to be reinstated to the satisfaction of Council on completion of the works.

10. No obstruction of the footpath or roadway may occur without the prior permission of Council. For further advice, please contact Council's Infrastructure and Environment Department on 8269 5355.
11. During construction of the development approved herein, measures will be implemented to ensure that the construction works do not result in an unreasonable impact on occupiers of adjacent properties or pollution of existing infrastructure through drag-out or stormwater runoff. Measures shall include as necessary:
  - a) A hard surface and controlled washing zone at the entry/exit points to the site, designed to reduce the potential for mud and material dragged out by construction vehicles; and
  - b) Containment of stormwater run-off within the site, which if being discharged into the stormwater system will be filtered to the satisfaction of Council; and
  - c) Reduction of the potential for dust and other airborne particles by the use of water sprinklers and/or other means of containment; and
  - d) The establishment of an appropriate storage compound for waste materials and litter. No building waste material shall be stored outside of the storage compound or similar industrial bin; and
  - e) All mechanical equipment shall be used in a manner to minimise the potential for noise pollution and ensure compliance with the requirements of the Environment Protection (Noise) Policy.

#### **Advisory Notes:**

- (1) Pursuant to Section 86(1)(a) of the Development Act, 1993, you have the right of appeal to the Environment, Resources and Development Court against either 1) a refusal of consent or 2) any condition(s) which have been imposed on a consent. Any such appeal must be lodged with the Court within two (2) months from the day on which you receive this notification or such longer period as may be allowed by the Court.

The Environment, Resources and Development Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide SA 5000 (Postal Address: GPO Box 2465, Adelaide SA 5001).

- (2) The development plan consent granted herein is effective for a period of twelve (12) months from the date of the decision. Unless Council extends this period, building rules consent is required within this time or the consent will lapse.

Any request for an extension of the operative period of the consent must be submitted to Council in writing, accompanied by the applicable fee.

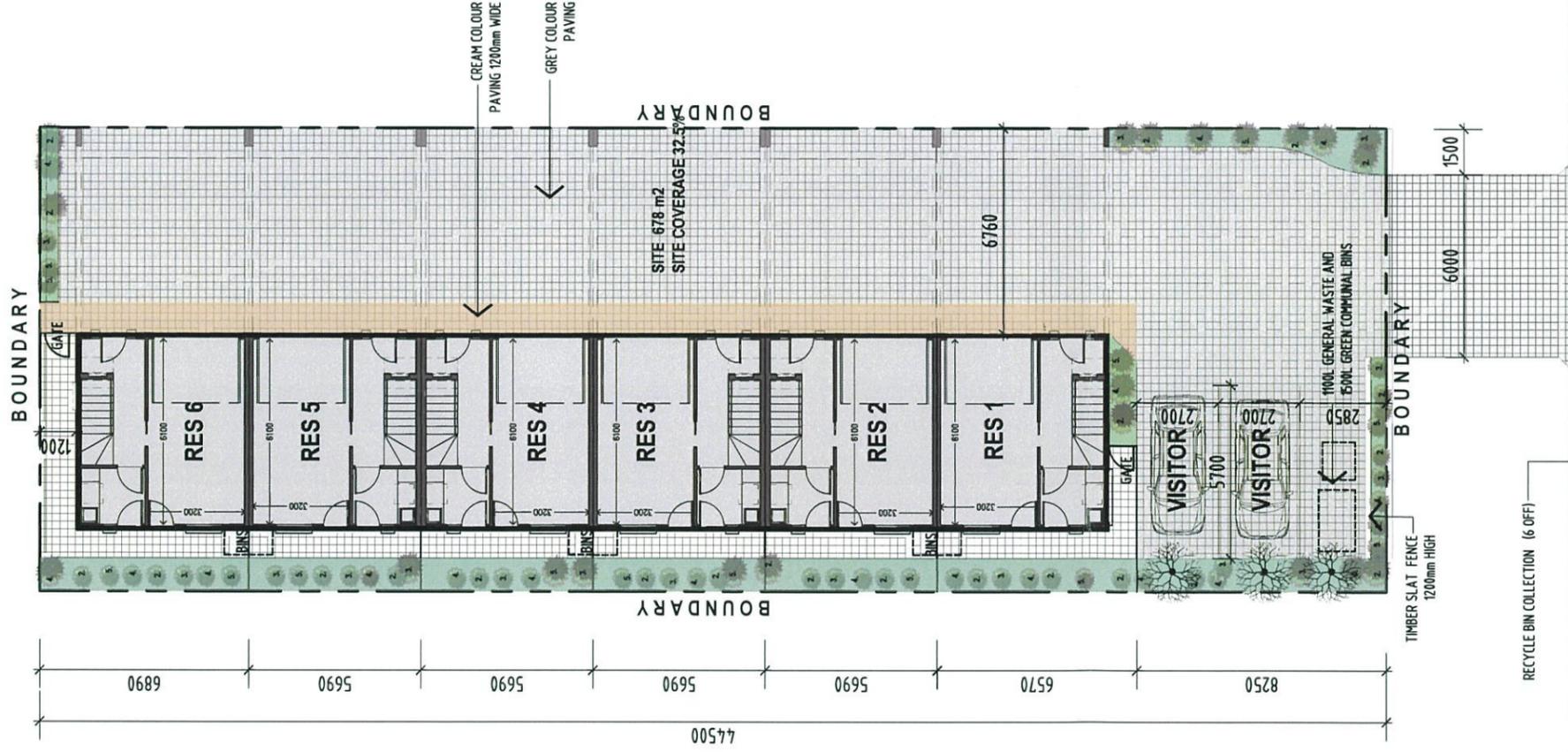
- (3) Further application pursuant to the Local Government Act shall be made to the Infrastructure Assets and Environment Department for the proposed crossover prior to construction activities occurring.

Road/Kerbing/Footpath Works will need to be inspected by an Assets and Infrastructure Officer to determine they have met all relevant requirements. All work including line marking will be the responsibility of the applicant as will the reinstatement of any damaged Infrastructure / Services related to these works. All works will be carried out at the cost to the applicant.

- (4) Prior to the commencement of construction of the development herein approved, it is strongly recommended that you employ the services of a licensed Land Surveyor to carry out an identification survey of the subject land and to peg the true boundaries, to ensure that building work will be either on the true boundaries or the specified distance from the true boundaries of the subject land, as the case may be.

Failure to correctly site the development on the land in accordance with the plans approved herein would constitute a breach of the *Development Act 1993*. Any amendments required to the approved plans as a result of the survey are to be submitted to Council for approval prior to works commencing.

- (5) You are encouraged to consult with adjoining property owners before commencing any work, to assist in minimising nuisance or inconvenience caused during construction.
- (6) You are required to give formal notification to, and consult with, the adjoining property owner if you are removing, replacing or altering an existing fence or building a freestanding wall along the common boundary that would, for all purposes, be a dividing fence (Section 5 of the *Fences Act 1975*).
- (7) During construction of the development approved herein, measures will be implemented to ensure that the construction works do not result in an unreasonable impact on occupiers of adjacent properties or pollution of existing infrastructure through drag-out or stormwater runoff. Measures shall include as necessary:
- A hard surface and controlled washing zone at the entry/exit points to the site, designed to reduce the potential for mud and material dragged out by construction vehicles; and
  - Containment of stormwater run-off within the site, which if being discharged into the stormwater system will be filtered to the satisfaction of Council; and
  - Reduction of the potential for dust and other airborne particles by the use of water sprinklers and/or other means of containment; and
  - The establishment of an appropriate storage compound for waste materials and litter. No building waste material shall be stored outside of the storage compound or similar industrial bin; and
  - All mechanical equipment shall be used in a manner to minimise the potential for noise pollution and ensure compliance with the requirements of the Environment Protection (Noise) Policy.
- (8) To ensure compliance with applicable standards as described in the Environment Protection (Noise) Policy established under the Environment Protection Act, construction activities should only take place between the hours of 7:00am and 7:00pm, Monday to Saturday inclusive, and not on Sundays or public holidays.
- (9) The construction of the building shall be undertaken in accordance with the Ministers Specification SA78B – Construction requirements for the control of external sound. Compliance with the Minister’s Specification would be required as part of the Building Code of Australia (BCA).
- (10) National Broadband Network (NBN): The National Broadband Network is being rolled out across the City of Prospect. It is recommended that you consider your future connection to the optical fibre network prior to commencing works. Please visit [www.nbnco.com.au](http://www.nbnco.com.au) for further details on how to get connected.

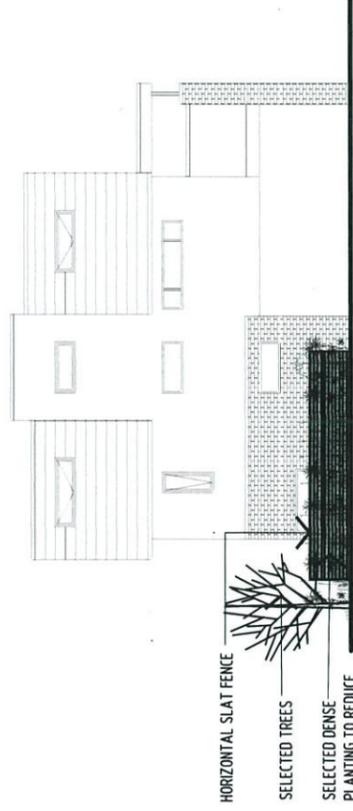


RECYCLE BIN COLLECTION (6 OFF)



**CHURCHILL ROAD**  
**SITE PLAN**

SCALE 1:200



**STREETSCAPE ELEVATION**

SCALE 1:200



**LEGEND**

HATCH DENOTES EXTENT OF NEW BUILDING WORK

**INDICATIVE LANDSCAPING SCHEDULE**

TREES	HEIGHT	SPREAD
1. CRAPE MYRTLE	5.0 - 6.0m	2.5 - 3.0m
SHRUBS		
2. WESTRINGIA FRUTICOSA	0.3 - 1.2 m	
3. COPROSEMA ALBA	0.6 - 0.7m	
4. VIBURNUM TINUS	1.0m	
STRAP LEAF PLANTS		
5. CONVULVULUS CHEIRUM	0.3 - 0.5m	

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DATE	REV	DESCRIPTION	BY



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**SITE ADDRESS:**  
162 CHURCHILL ROAD  
PROSPECT SA

**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
SITE PLAN

**DRAWING NUMBER:** PD01

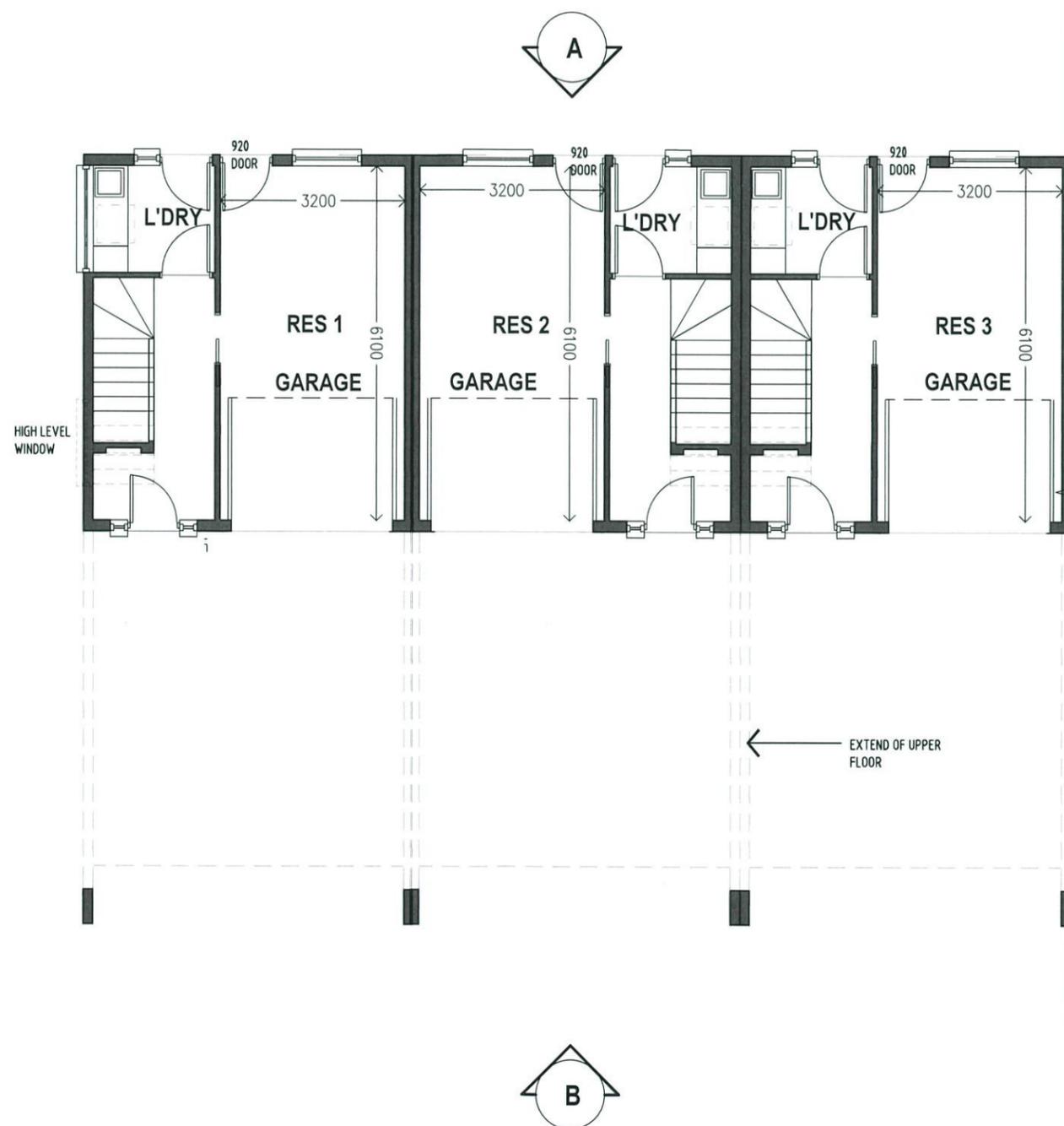
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09.05.2017.

AREAS RES 1	(m <sup>2</sup> )
GROUND FLOOR GARAGE/ L'DRY	36.70
FIRST LIVING	53.48
SECOND LIVING	68.86
BALCONY	15.86
<b>TOTAL</b>	<b>174.90</b>

AREAS RES 2-6	(m <sup>2</sup> )
GROUND FLOOR GARAGE/ L'DRY	36.94
FIRST LIVING	53.72
SECOND LIVING	63.33
BALCONY	15.94
<b>TOTAL</b>	<b>169.93</b>



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**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

**DRAWING NUMBER:** PD02

**DRAWN:** DI **DATE:** AUGUST 2014

**SCALE:** 1:100 **JOB NO:** 1026.14

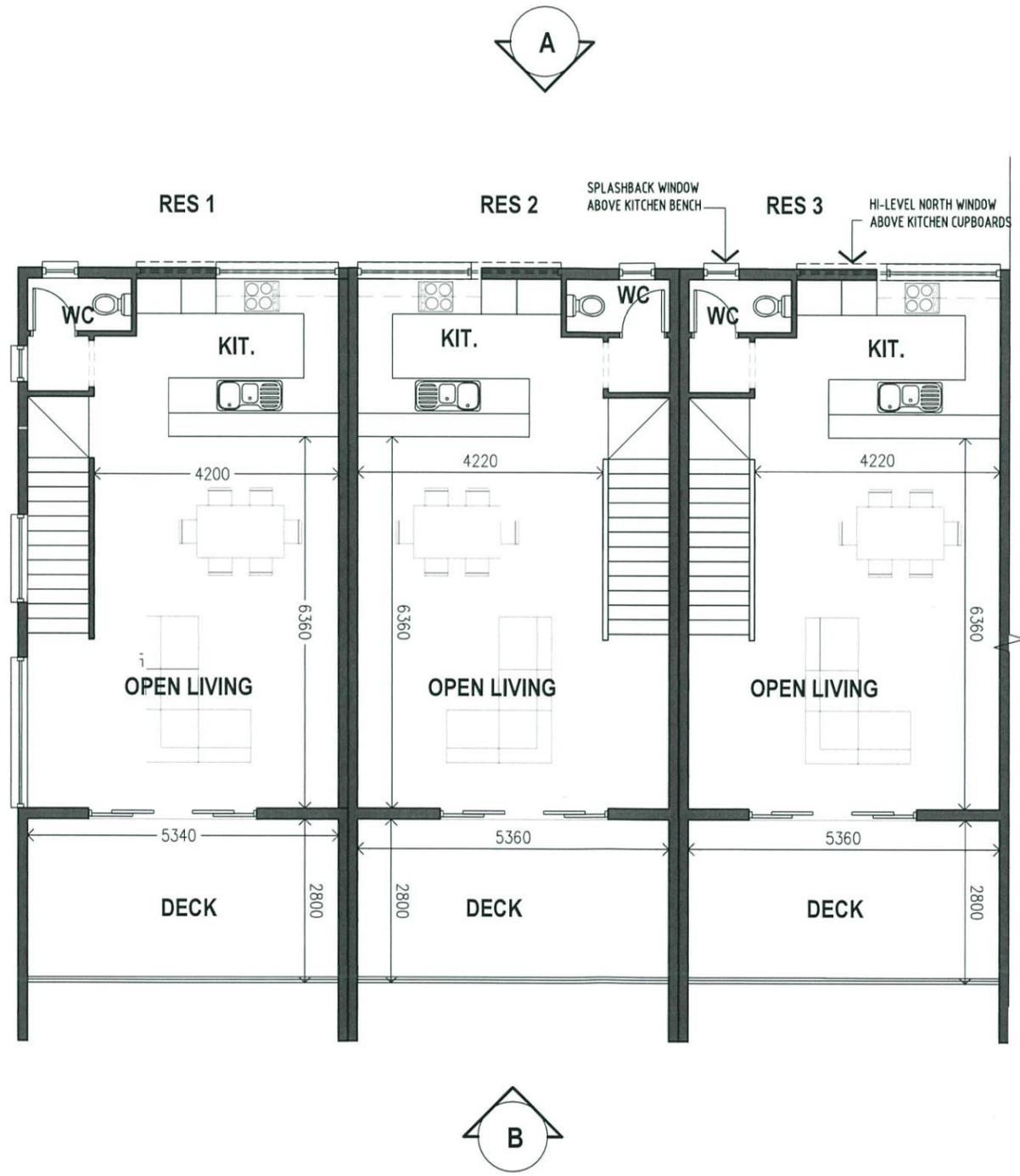
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**GROUND FLOOR PLAN RES 1-3**

SCALE 1:100

**PLANNING DRAWING**  
09.05.2017.



**FIRST FLOOR PLAN RES 1-3**  
SCALE 1:100

**WC REVISIONS**

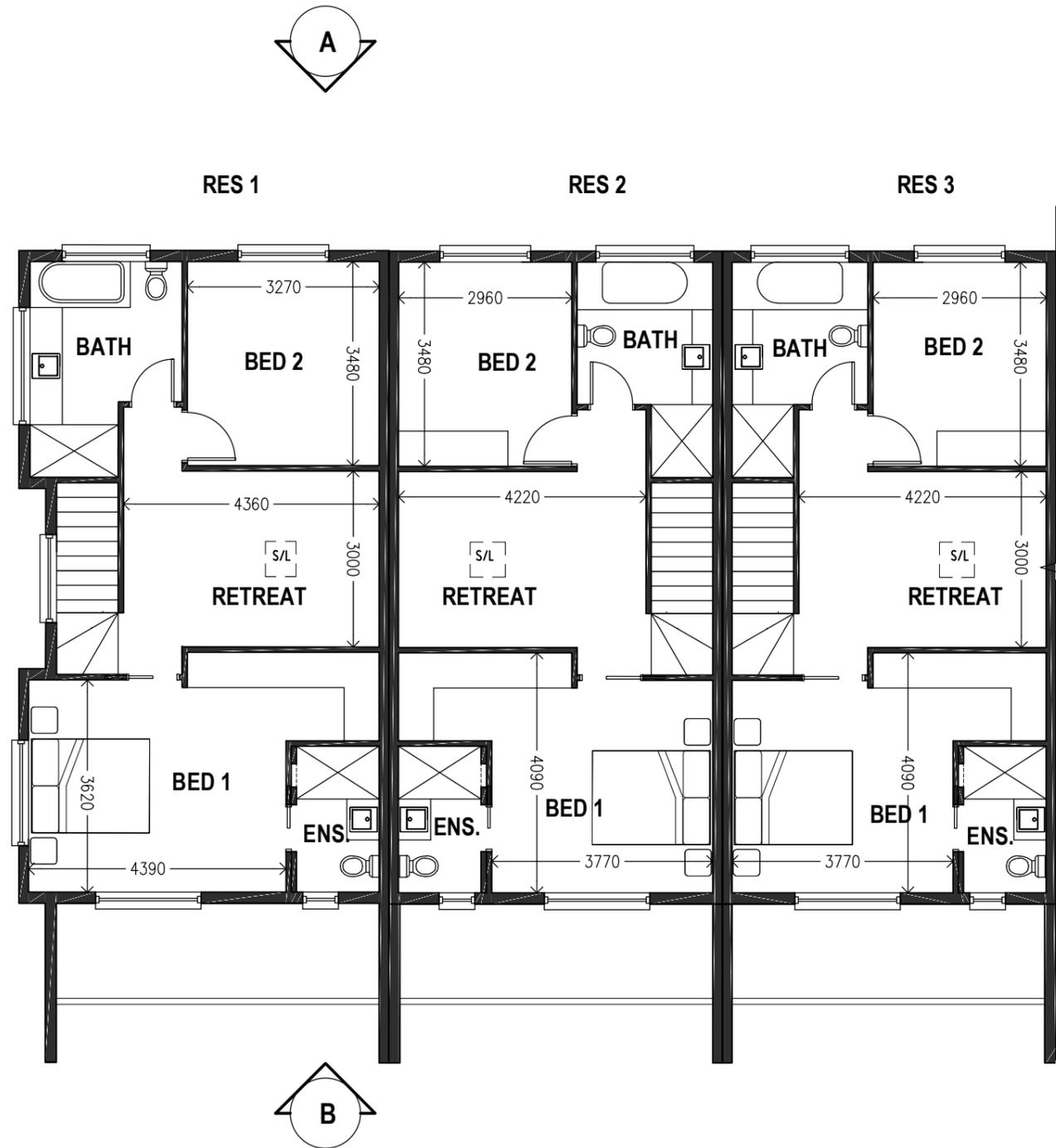
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<b>SITE ADDRESS:</b>	162 CHURCHILL ROAD PROSPECT SA
<b>CLIENT:</b>	CLIENT 1
<b>DRAWING TITLE:</b>	GROUND FLOOR PLAN RES 1
<b>DRAWING NUMBER:</b>	PD03
<b>DRAWN:</b>	DI DATE: AUGUST 2014
<b>SCALE:</b>	1:100 JOB NO: 1026.14
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**SECOND FLOOR PLAN RES 1-3**

SCALE 1:100

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**SITE ADDRESS:**  
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**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

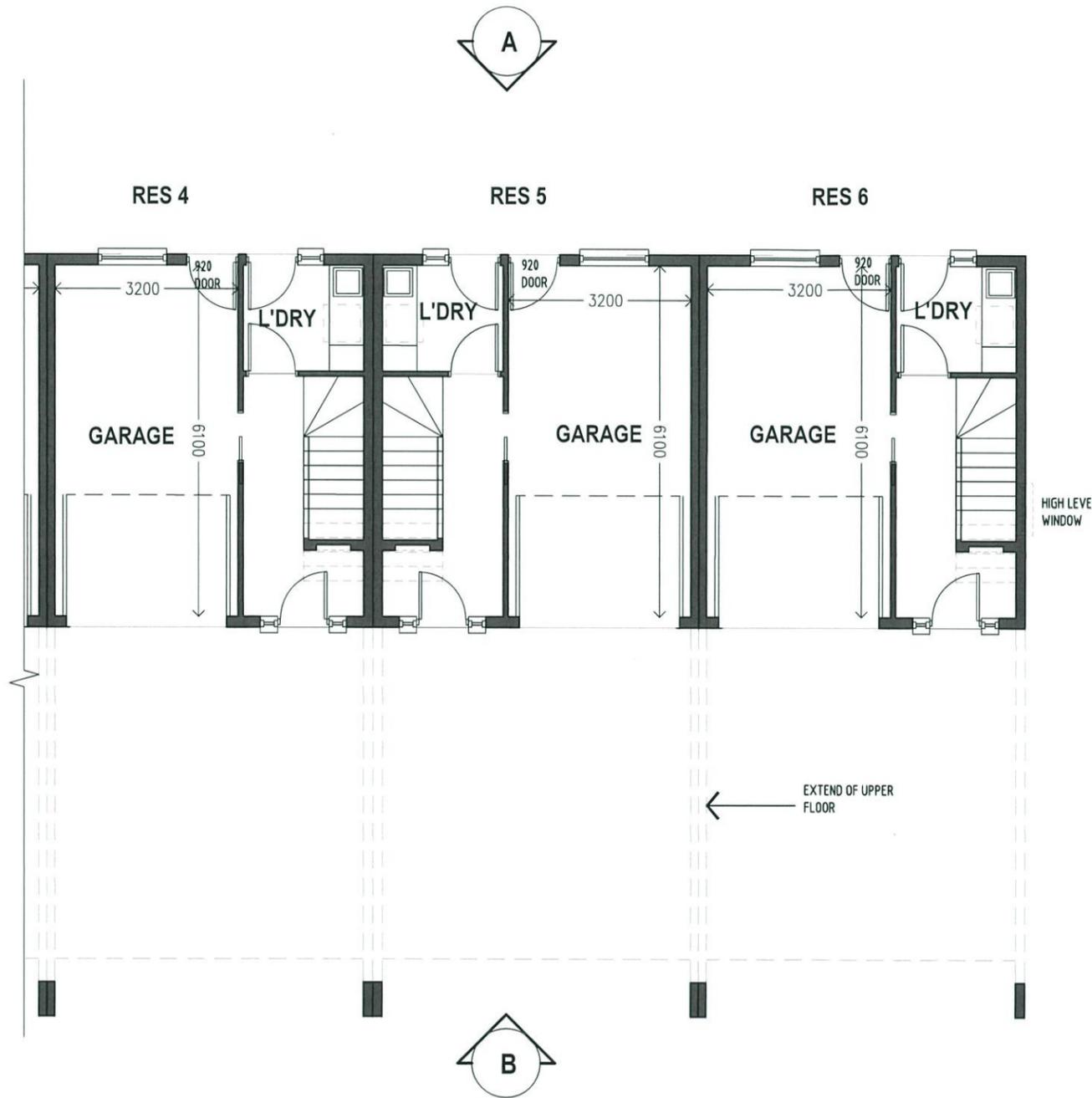
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**DRAWN:** DI **DATE:** AUGUST 2014

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**GROUND FLOOR PLAN RES 4-6**

SCALE 1:100

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**SITE ADDRESS:**  
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**CLIENT:**  
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**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

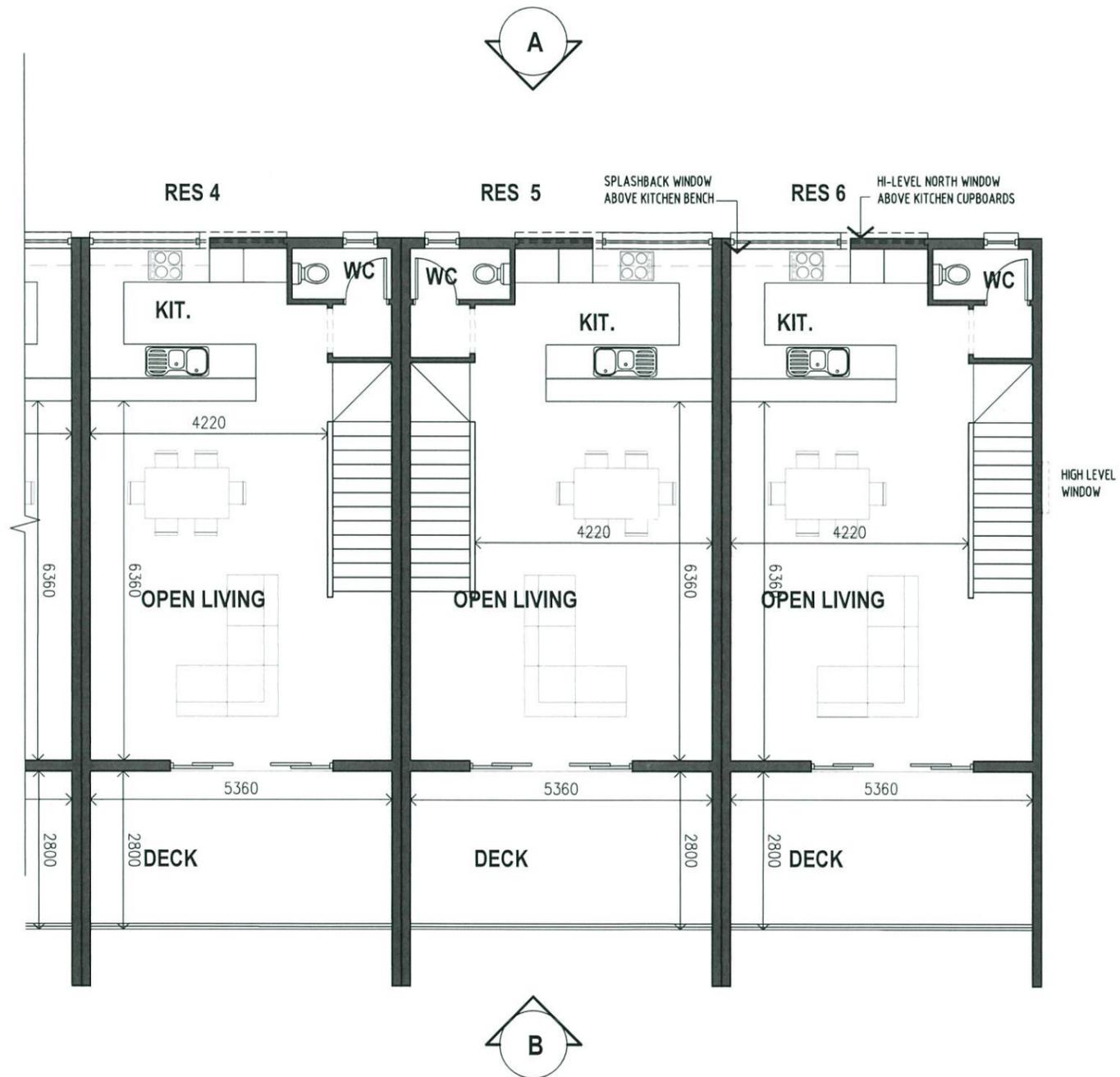
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**PLANNING DRAWING**  
09.05.2017.



AREAS RES 2-6	(m <sup>2</sup> )
GROUND FLOOR GARAGE/ L'DRY	36.94
FIRST LIVING	53.72
SECOND LIVING	63.33
BALCONY	15.94
<b>TOTAL</b>	<b>169.93</b>

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PROSPECT SA

**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

**DRAWING NUMBER:** PD06

**DRAWN:** DI **DATE:** AUGUST 2014

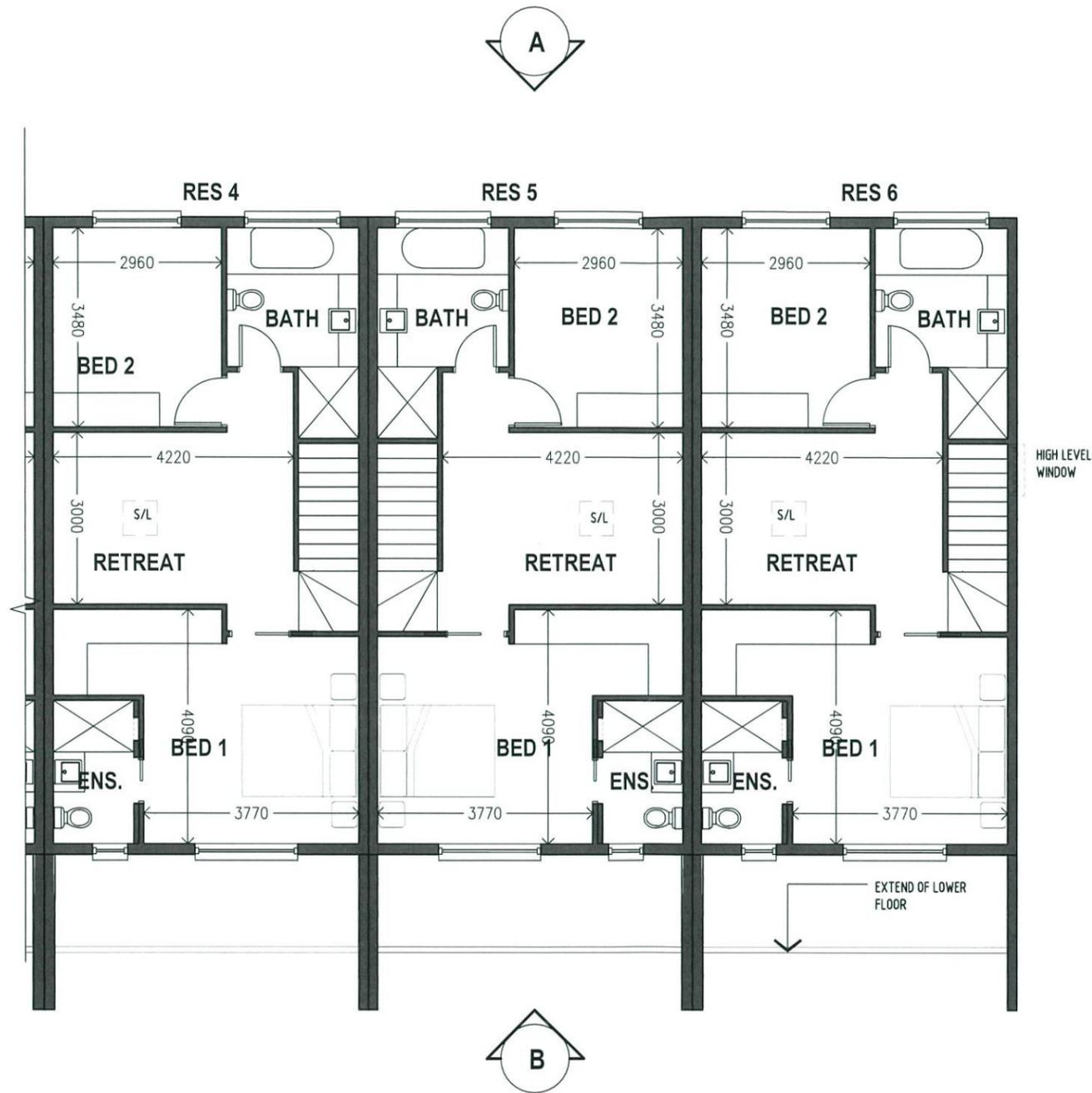
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**FIRST FLOOR PLAN RES 4-6**  
SCALE 1:100

**PLANNING DRAWING**  
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**SECOND FLOOR PLAN RES 4-6**

SCALE 1:100

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CLIENT:  
CLIENT 1

DRAWING TITLE:  
GROUND FLOOR PLAN RES 1

DRAWING NUMBER: PD07

DRAWN: DI DATE: AUGUST 2014

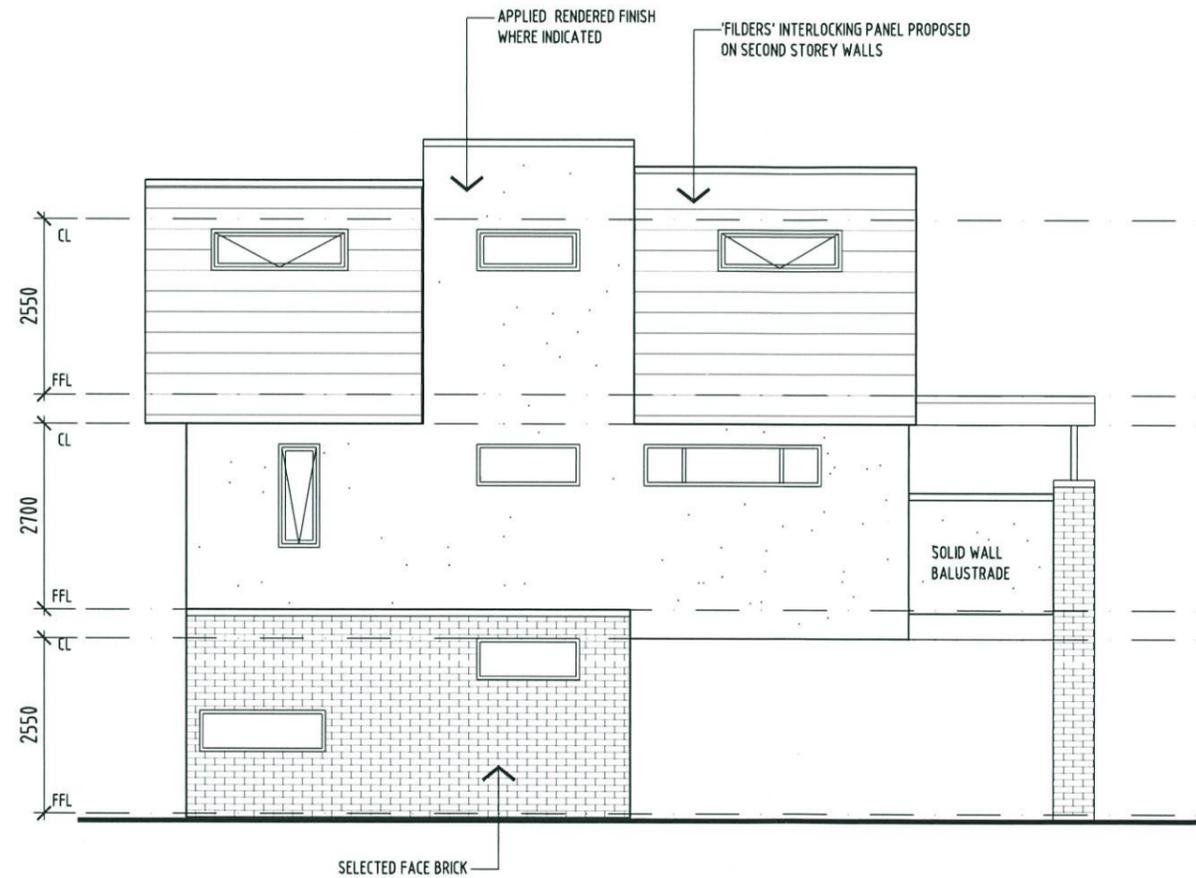
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PHOTO OF 'FIELDERS' INTERLOCKING PANEL PROPOSED ON SECOND STOREY WALLS



**FRONT ELEVATION**

SCALE 1:100

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**SITE ADDRESS:**  
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PROSPECT SA

**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

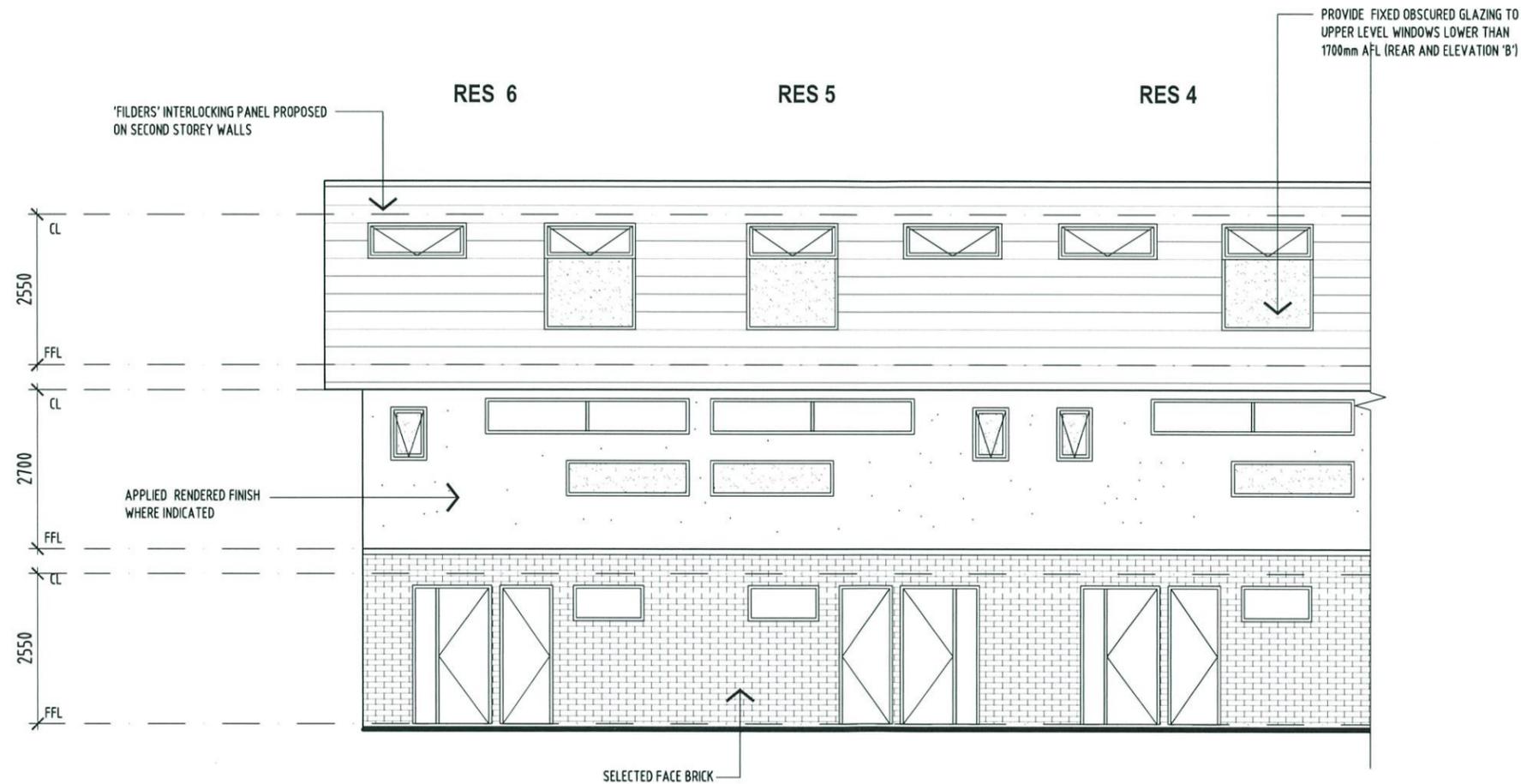
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**DRAWN:** DI **DATE:** AUGUST 2014

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**ELEVATION A**

SCALE 1:100

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**SITE ADDRESS:**  
162 CHURCHILL ROAD  
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**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

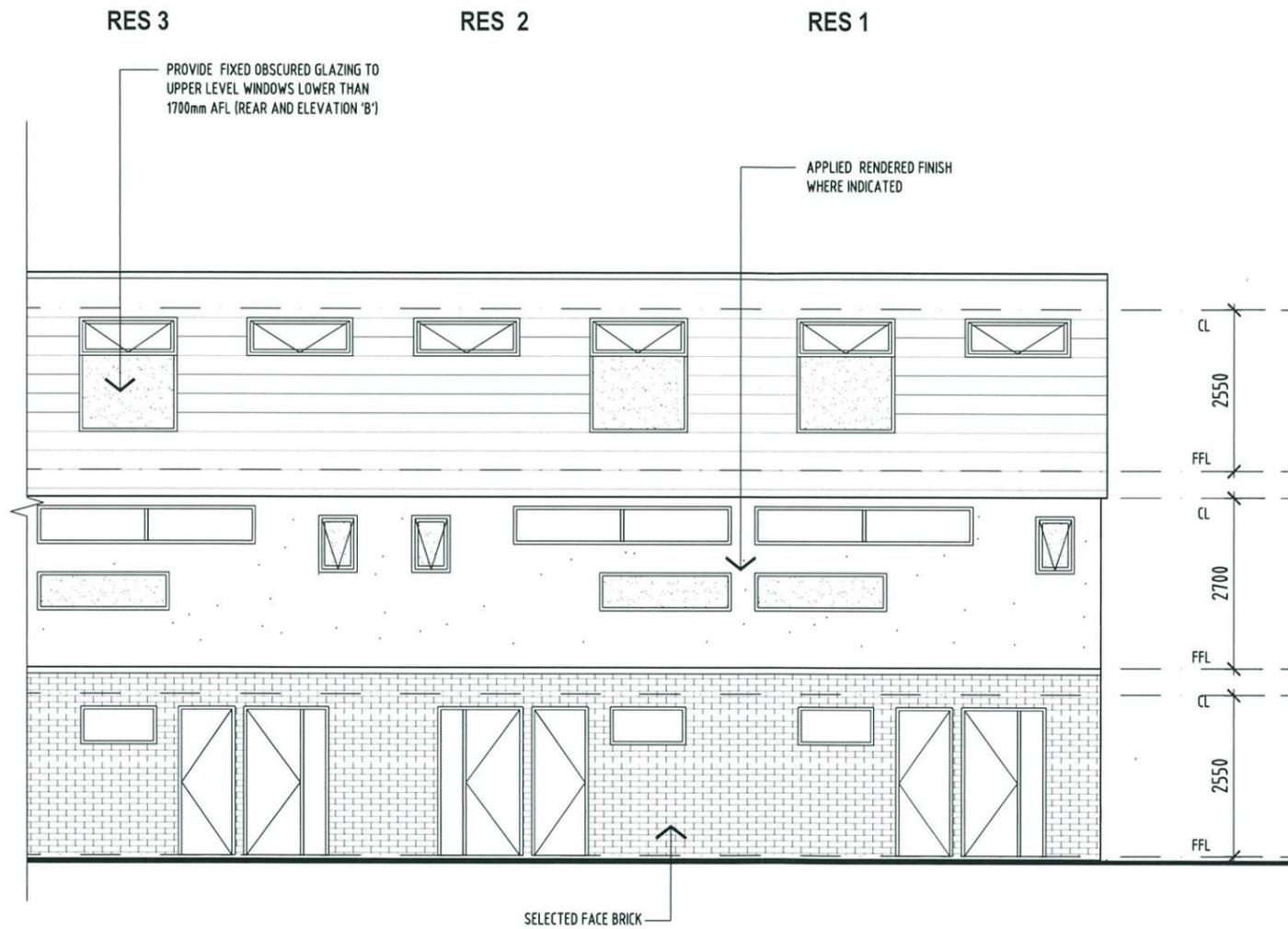
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**DRAWN:** DI **DATE:** AUGUST 2014

**SCALE:** 1:100 **JOB NO:** 1026.14

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**ELEVATION A**

SCALE 1:100

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**SITE ADDRESS:**  
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PROSPECT SA

**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

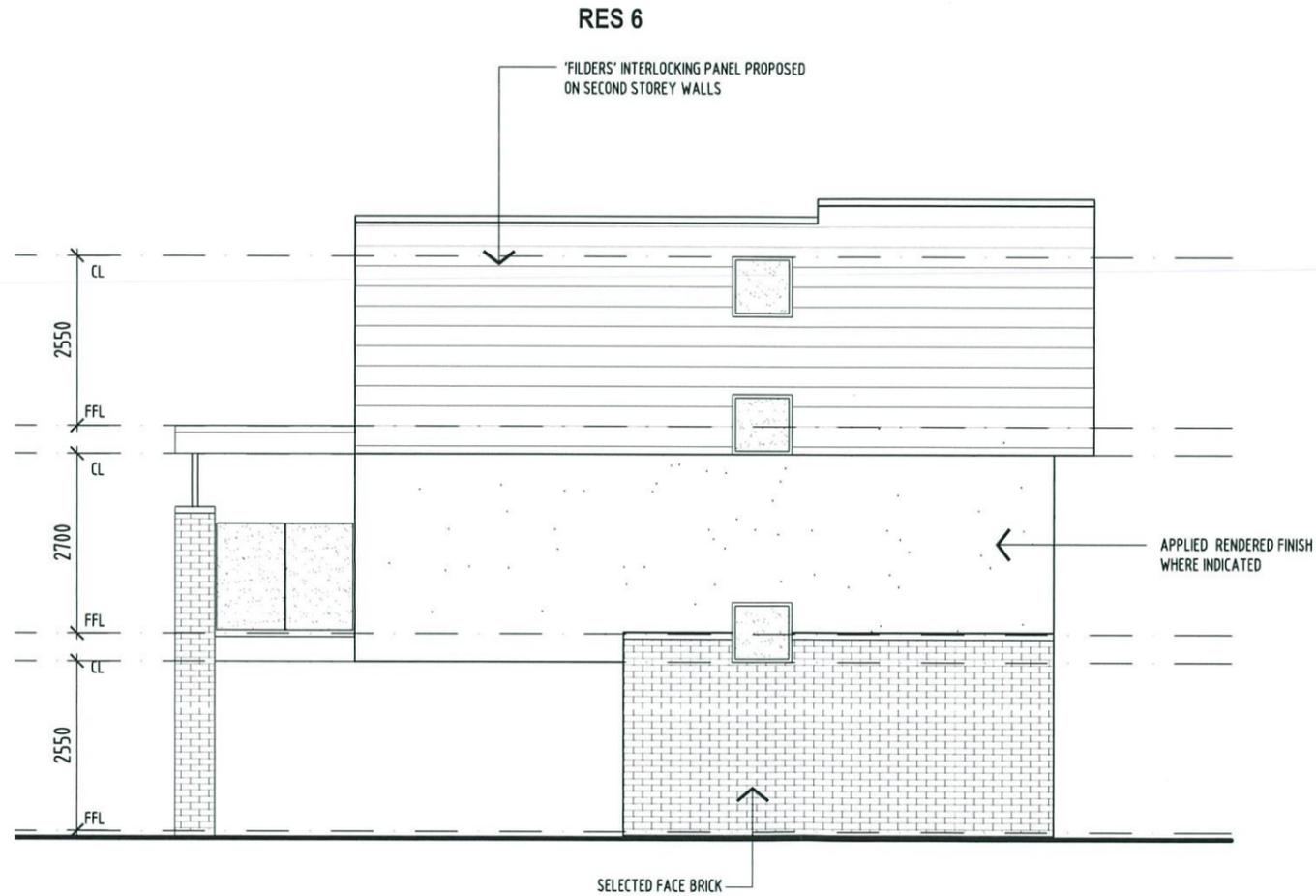
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**REAR ELEVATION**

SCALE 1:100

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**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

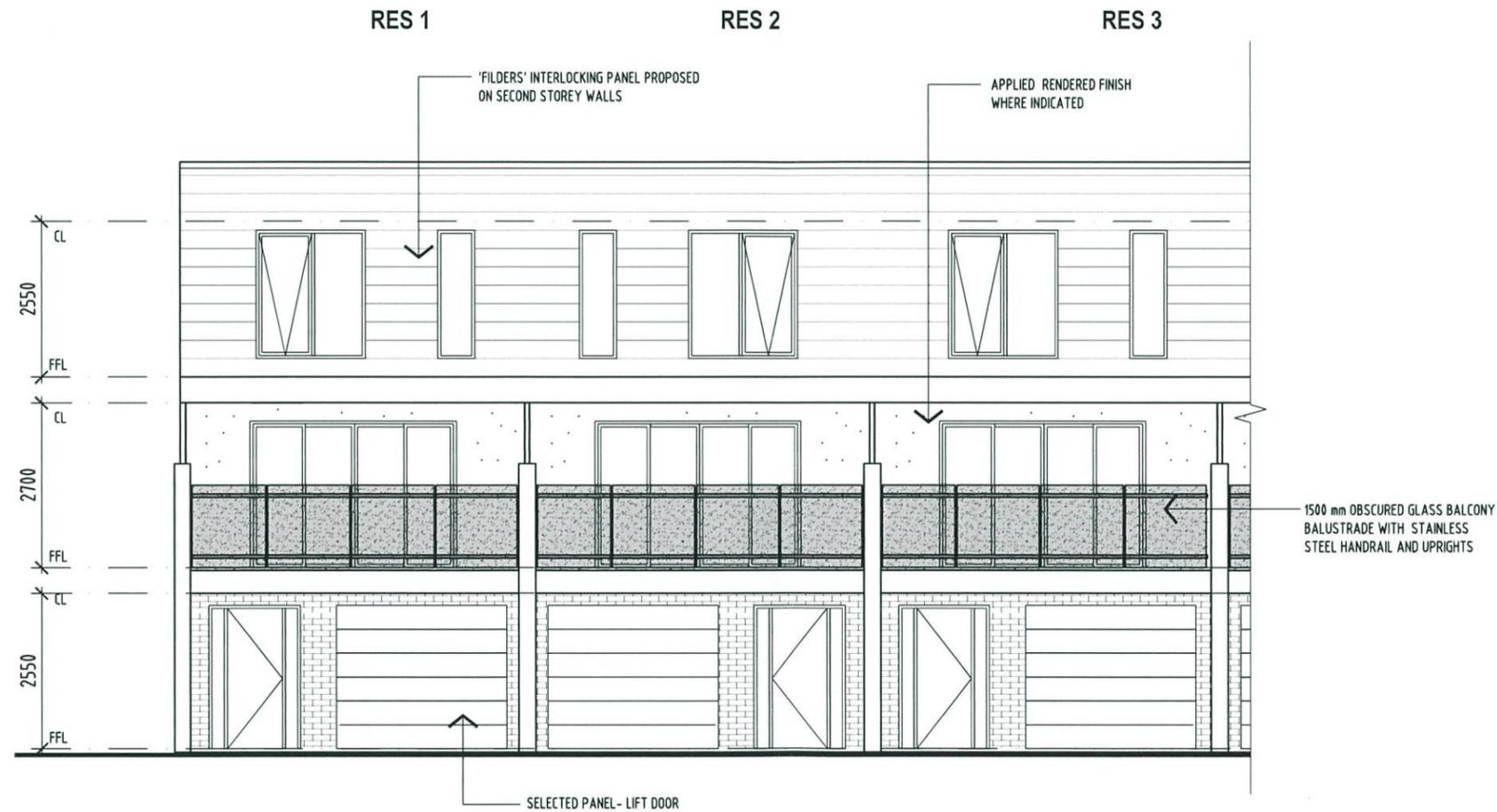
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**DRAWN:** DI **DATE:** AUGUST 2014

**SCALE:** 1:100 **JOB NO:** 1026.14

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**ELEVATION B**  
SCALE 1:100

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PROSPECT SA

**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

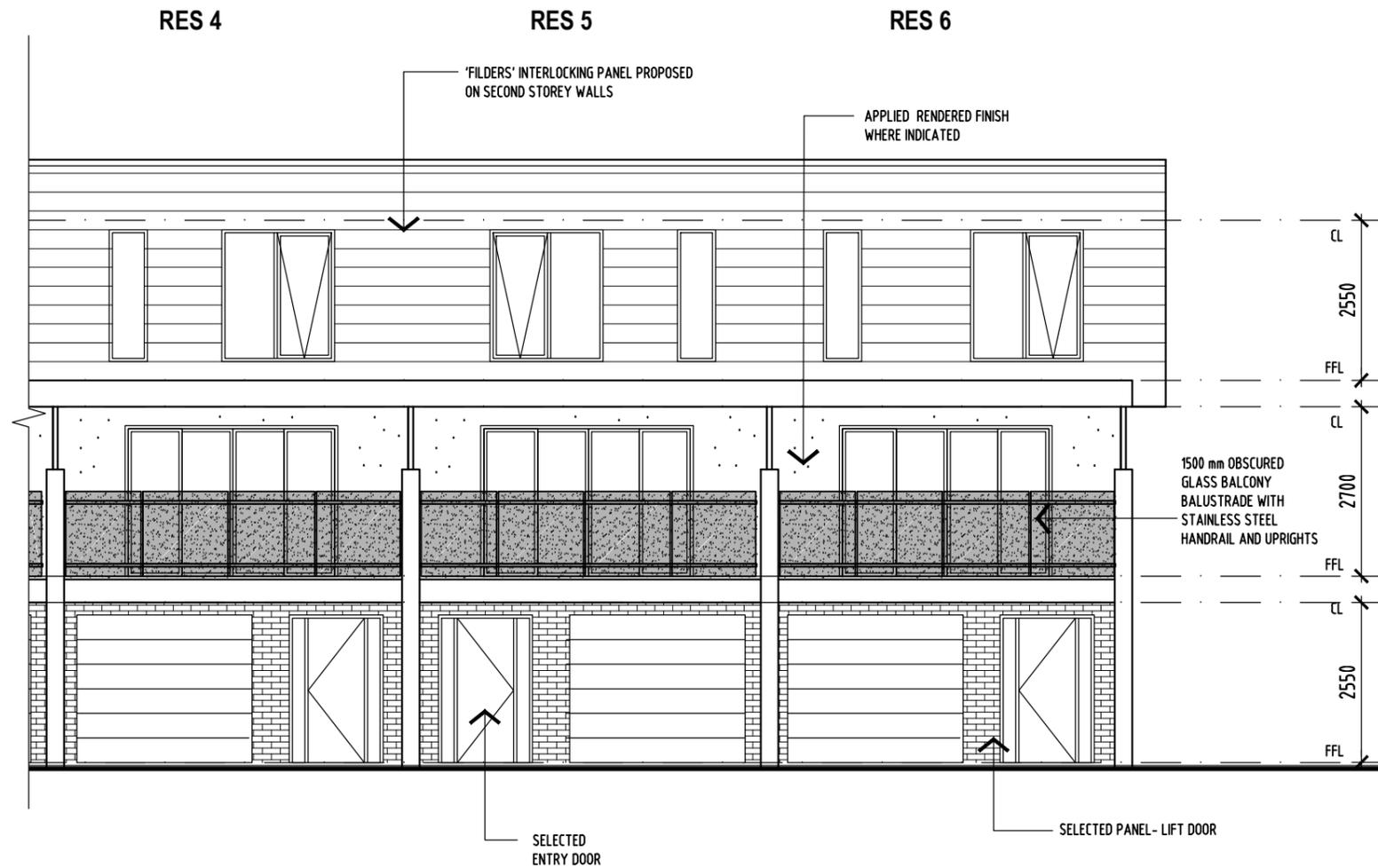
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**DRAWN:** DI **DATE:** AUGUST 2014

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**ELEVATION B**

SCALE 1:100

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**CLIENT:**  
CLIENT 1

**DRAWING TITLE:**  
GROUND FLOOR PLAN RES 1

**DRAWING NUMBER:** PD13

**DRAWN:** DI **DATE:** AUGUST 2014

**SCALE:** 1:100 **JOB NO:** 1026.14

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**AGENDA ITEM:** 6.3

**To:** Development Assessment Panel (DAP) on 5 June 2017

**From:** Susan Giles, Development Officer, Planning

**Proposal:** Removal of a Significant Tree – *Agonis flexuosa* (Willow Myrtle) (DA 050/256/2016)

**Address:** 59 Farrant Street, Prospect (CT 5934/617)

---

**SUMMARY:**

Applicant: Mr Varun Agheda

Owner: Mr Varun Agheda

Planning Authority: Council

Mandatory Referrals: Nil

Independent Advice: Council's Landscape Architect

Public Notification: Category 1

Representations/Submissions: Nil

Respondent: Nil

Development Plan Version: Consolidated 21 April 2016

Zone and Policy Area: Residential Zone (Policy Area A450)

Key Considerations: Visual Amenity, Definition of Regulated and Significant Tree

Previously Considered: 13 February 2017

**Recommendation:** **Notify the Environment, Resources and Development Court that the compromise proposal is supported**

---

**ATTACHMENTS:**

Attachments 1-5 Notice of Appeal

Attachments 6-12 Supporting correspondence prepared by Botten Levinson Lawyers

Attachments 13-20 Tree Report prepared by Dr Dean Nicolle

Attachments 21-39 Visual Assessment Report prepared by Mr James Hayter

Attachments 40-48 Report from DAP Meeting 13 February 2017

---

**1. EXECUTIVE SUMMARY**

1.1 The proposal is for the consideration of additional details submitted in response to a development application that was refused by Council's Development Assessment Panel.

The applicant appealed the decision and has subsequently presented information for consideration during the conciliation proceedings.

- 1.2 The appellant seeks that the Council's Development Assessment Panel reconsider the proposal with the view that the tree should be assessed as a regulated tree, and that the tree does not significantly contribute to the character or visual amenity of the locality. The appellant proposes that two replacement trees are planted, one on the subject land, and one to replace the street tree.
- 1.3 The documentation is being considered as part of the appeal process and no mandatory referrals or public notification is required. A Conciliation Conference is set down for Monday 19 June 2017 where it is anticipated that Council's planning staff would provide feedback to the Court.
- 1.4 While the appellant is querying the definition of the tree, the key consideration for the appeal is if the subject tree significantly contributes to the character or visual amenity of the local area.
- 1.5 The appellant has provided additional information outlining that the tree does not possess characteristics that render it worthy of retention, and that semi-mature replacement trees would provide a significantly improved long term outcome for the land and the locality. Upon assessment, this position is considered valid and therefore, it is recommended that the compromise proposal is supported.

## **2. BACKGROUND**

- 2.1 The Development Assessment Panel (DAP) at its meeting of 13 February 2017 refused the application for removal of a significant tree, an *Agonis flexuosa* (Willow Myrtle) at 59 Farrant Street, Prospect, as the proposal was considered to:
  - Result in the removal of a significant tree that is worthy of retention, without giving due regard to all reasonable remedial treatments available.
- 2.2 The applicant lodged an appeal against the decision to the Environment, Resources and Development Court. Council received a copy of the notice of appeal, which outlines the grounds of appeal being that the tree is a regulated tree, not a significant tree, and that having regard to the circumstances and the relevant provisions of the Development Plan, the proposed development warranted development plan consent (refer **Attachments 1-5**).
- 2.3 The applicant has engaged Mr Tom Game from Botten Levinson Lawyers to assist in providing expert advice and assistance. Accordingly, Mr Game has provided additional information for consideration as part of the appeal process. This approach is usual of Environment, Resources and Development Court proceedings, where the parties seek to resolve the appeal without proceeding to a hearing.
- 2.4 The report from the 13 February 2017 DAP meeting is attached for the DAP's reference (refer **Attachments 40-49**).

## **3. PROPOSAL**

- 3.1 The appellant requests that the DAP reconsider its decision for the removal of an *Agonis flexuosa* (Willow Myrtle) at 59 Farrant Street, Prospect. As a compromise, the appellant proposes to plant two semi-mature replacement trees. No other detail is proposed (refer **Attachments 6-12**).

## 4. **REFERRALS**

### 4.1 **Internal (Advisory) Referrals**

4.1.1 Advice was sought from Council's Landscape Architect regarding the contribution the tree provides to the amenity of the locality. While they agree that there is no significant visual impact 4 or more houses away, they do not agree with the visual assessment made by Mr Hayter on behalf of the appellant. Their comments are outlined in more detail below.

### 4.2 **External (Legislated) Referrals**

4.2.1 No external referral was required.

## 5. **PLANNING COMMENTARY**

5.1 Pursuant to Section 86(1)(a)(i) of the Development Act 1993, an applicant may appeal to the Environment Resources and Development Court (Court) against a refusal to grant authorisation to a development proposal.

5.2 As part of the appeal proceedings with the Court, an appellant has an opportunity to submit material or other relevant evidence as necessary. The appellant has submitted additional correspondence outlining reasons why the application should be granted consent, and requesting that the Panel reconsider its decision and agree to the removal of the tree. As a compromise, the appellant proposes to plant two semi-mature replacement trees, one on the subject land, and one to replace the street tree.

5.3 If the compromise proposal is accepted, then an order to that effect would be issued by the Court and approval granted to the application and the replanting of the two replacement trees.

5.4 If the compromise proposal is not supported, the appellant has the right to proceed to a hearing before the Court on the matter.

## 6. **PLANNING ASSESSMENT**

### 6.1 **Definition of Regulated and Significant Tree**

6.1.1 In support of the appeal, the appellant has provided an arboricultural assessment and report prepared by Dr Dean Nicolle. Dr Nicolle measures the tree trunk, at 1m above natural ground level, to be 3.10m and notes that this measurement would make the tree 'significant' as defined by the Development Act 1993.

6.1.2 However, Dr Nicolle outlines that this circumference measurement is an artifact of the trunk flaring into a number of primary leaders below one metre above ground level, and is therefore an unrealistic representation of the true circumference of the tree. Dr Nicolle suggests that a more acceptable measurement of the trunk circumference would be gained by measuring the trunk at its narrowest point below, one metre above natural ground level, and below the flaring of the trunk into a number of primary leaders. Dr Nicolle states that this is an approach used by the Australian Standard for Protection of trees on development sites. As such, when measuring the trunk circumference in accordance with the above, the trunk measures 2.68m. Accordingly, Dr Nicolle defines the tree as a 'regulated' tree, given the trunk circumference is greater than 2m but less than 3m, as described by the Development Act 1993 (refer **Attachments 16-17**).

6.1.3 The Development Act 1993 outlines that a tree is to be declared a regulated or significant tree as defined by the Development Regulations 2008.

- 6.1.4 The Development Regulations 2008 (Regulation 6A) defines a regulated and significant trees as follows:

**regulated tree** – namely trees that “*have a trunk with a circumference of 2 metres or more or, in the case of trees with multiple trunks, that have trunks with a total circumference of 2 metres or more and an average circumference of 625 millimetres or more, measured at a point 1 metre above natural ground level*”.

**significant tree** – “*a regulated tree [that] has a trunk with a circumference of 3 metres or more or, in the case of a tree with multiple trunks, has trunks with a total circumference of 3 metres or more and an average circumference of 625 millimetres or more, measured at a point 1 metre above natural ground level...*”

- 6.1.5 The tree circumference is greater than 3m, when measured at 1m above natural ground level. Accordingly, based on the definition within the Development Act and Regulations, Council’s planning staff are of the opinion that the tree is a Significant Tree, albeit that it is recognised that there is some uncertainty regarding whether a branch union forms part of a tree’s trunk.

## 6.2 Aesthetic and Environmental Benefit

- 6.2.1 Numerous cases before the Environment, Resources and Development (ERD) Court have established the process by which significant trees should be assessed against the provisions of the Development Plan.
- 6.2.2 The matter of *Summers v City of Unley* [2002] SAERDC 113 is regularly referenced with respect to assessment process, in which Judge Trenorden expressed that three key considerations are required:
1. Does the subject tree achieve one (or more) of the positive attributes of Council Wide PDC 346?
  2. If so, does it fulfil one of the removal criteria set out by Council Wide PDC 349?
  3. If so, has it been demonstrated that all other reasonable remedial treatments will be ineffective?
- 6.2.3 Importantly, this means that if a tree does not make the important aesthetic and environmental contributions set out by Council Wide PDC 346, it follows that the removal of the tree should be approved. Further, if the tree does make an important aesthetic or environmental contribution, its removal should only be approved if it fulfils one of the criteria of Council Wide PDC 349 and it is demonstrated that remedial measures will be ineffective.
- 6.2.4 Dr Nicolle has advised that the tree is not indigenous to the locality, it is not a rare or endangered species and it does not provide an important habitat for native fauna. It is noted that Dr Nicolle does not advise on the health of the tree or if the tree poses a risk to the public or private safety. Dr Nicolle does outline that the tree has a life expectancy of 10-20 years if provided with supplementary summer irrigation.
- 6.2.5 The appellant has engaged Mr James Hayter to undertake a visual assessment of the subject tree (refer **Attachments 21-39**). Mr Hayter has assessed whether the tree provides an important aesthetic benefit to the locality, and specifically if it significantly contributes to the character or visual amenity of the locality, and if the removal of the tree and its replacement would be consistent with the provisions of the Residential Zone, A450 Policy Area.

- 6.2.6 Mr Hayter states that the landscape character of the locality is well established and attractive, comprising a variety of street trees and front and back gardens which contribute to the overall amenity and attractiveness of the area. Some street trees are missing or dead, such as the street tree in front of the subject land.
- 6.2.7 Mr Hayter describes the subject tree as having a thick full canopy that is visually dense, and that the tree almost entirely fills the front garden of the subject land. Within his assessment, Mr Hayter considered the location of the tree, its visibility from several viewpoints, its significance when considered against the existing landscape, and the likely visual impact to the locality. Mr Hayter also provided commentary on if replacement trees would result in a better outcome for the street.
- 6.2.8 Mr Hayter outlines that the tree is only visible from within Farrant Street and not visible from adjacent streets. Mr Hayter advises that the subject tree is visible for a limited length along Farrant Street as the tree is either blocked or filtered by other existing vegetation comprising street trees or trees in front gardens. Given the street trees and other trees and vegetation in front yards, the subject tree blends into the vegetation rather than stands out in the streetscape. Accordingly, Mr Hayter summarises his visual assessment that the likely visual impact to the streetscape if removed would be low or have no visual impact. He concludes that the tree does not make a significant contribution to the character of visual amenity of the locality (refer **Attachment 39**).
- 6.2.9 Council's landscape architect advises that the subject tree has an evergreen habit and is green all year round which creates visual impact during winter. Particularly since some trees in the area are deciduous. They do not agree entirely with the visual assessment by Mr Hayter, advising that there are approximately 19 residential locations which would be visually impacted by the tree's removal (based on views from the footpath, not private land). While there would be a significant impact 1-3 houses away if the tree was removed, they agree with Mr Hayter that there is no significant visual impact from a distance of 4 or more houses away. Given the tree canopy extends beyond the garden, and there are no large trees within the immediate vicinity of the location, the tree has a significant visual impact.
- 6.2.10 By removing the subject tree, Mr Hayter suggests that there would be an increased in light and ability to establish a front garden. Mr Hayter suggests that replacing the subject tree with a *Sophora japonica* (Japanese pagoda tree), or similar, on the subject land would result in a much improved visual and practical outcome for the resident. In addition, a replacement street tree would also improve the street by providing an enhanced leafy garden setting.
- 6.2.11 Council's landscape architect has advised that the tree species nominated for Farrant Street, as part of Council's 21<sup>st</sup> Century Street Tree Manual, is the *Acer buergerianum* (Trident Maple) which is a medium sized tree and is deciduous. Therefore, the retention of evergreen trees within private gardens become more visually important down Farrant Street.
- 6.2.12 The divergence of opinion arises in considering whether the thresholds described by Council Wide PDC 346 are achieved, namely that the tree makes an **important** contribution to, or that it forms a **notable** visual element of, the character or landscape of the local area.
- 6.2.13 As described within the previous report provided at the February 13 DAP meeting, the subject tree, was not considered to sufficiently demonstrate

environmental contributions, and was not considered to be a notable element of the landscape. However, together with its location, height and crown, the subject tree was deemed to be a prominent and positive feature on the subject land and along Farrant Street.

- 6.2.14 However, the provisions of the Development Plan seek the retention of significant trees only where they contribute one or more identified positive aesthetic or environmental attributes. In consideration of the visual assessment undertaken by Mr Hayter and Council's Landscape Architect, together with the weight placed by the ERD Court on achieving a threshold level of importance or notability, and notwithstanding that the tree is in good health, it is considered that the tree does not sufficiently demonstrate the relevant positive attributes.

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1 Council Wide Principle of Development Control 346 of Council's Development Plan suggests that it is desirable for a significant tree to be retained if it makes an important contribution to the character or amenity of the area.
- 7.2 The subject Willow Myrtle tree is considered to be a visible element within the landscape of the local area and as such, makes some positive contribution to the amenity of the locality. It is not considered however that this contribution is sufficiently important, nor is the tree sufficiently notable within the landscape of the local area, so as to warrant its retention.
- 7.3 As a result of concluding that the tree does not make an important aesthetic or environmental contribution to the local area, the compromise proposal for the removal of the subject tree and the planting of two semi-mature replacement trees is supported.

It is recommended:

That the Environment, Resources and Development Court be advised that Council's Development Assessment Panel is supportive of the compromise proposal for the removal of the Significant Tree at 59 Farrant Street, Prospect, on the basis that the planting of two semi-mature replacement trees is undertaken within 6 months from the date the Willow Myrtle tree is removed.

FDN  
SOUTH AUSTRALIA  
IN THE ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT  
No. 98/17

BETWEEN

**FARRANT STREET PTY LTD (ACN 613 785 952)**  
Appellant

and

**CITY OF PROSPECT**  
Respondent

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**NOTICE OF APPEAL**

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Date of document: 12 April 2017

Filed on behalf of the Appellant,  
Varun Agheda by:

Botten Levinson  
Level 1 Darling Building  
28 Franklin Street  
ADELAIDE SA 5000  
Telephone: 08 8212 9777  
Facsimile: 08 8212 8099  
Email: thg@bllawyers.com.au

L1234  
P9828

Settled by: Tom Game

Date and time of filing or transmission: April 2017



**TAKE NOTICE** that Farrant Street Pty Ltd (ACN 613 785 952) of C/- Botten Levinson Lawyers, GPO Box 1042, Adelaide SA 5001 (**the Appellant**) having applied by one of its Directors, Mr Varun Agheda on 14 July 2016 for development plan consent under the *Development Act 1993* (**the Act**) from the City of Prospect (**the Council**) to undertake certain development on the land situated at 59 Farrant Street, PROSPECT SA 5082, being the land described and comprised in Certificate of Title Register Book Volume 5934 Folio 617 (**the land**), namely for a proposal described by the Council as "Removal of a significant tree – *Agonis flexuosa* (Willow Myrtle)" (**the proposed development**) and being aggrieved by the decision of the Council to refuse consent to the proposed development, notice of which refusal was received by the Appellant on or about 14 February 2017 **HEREBY APPEALS** to the Environment, Resources and Development Court against the said refusal.

#### **Statement of matters leading up to the Appeal**

1. The Appellant is the owner of the land.
2. The land contains a mature *Agonis flexuosa* (Willow Myrtle) (**the tree**).
3. By Development Application No. 050/256/2016 (**the application**) the Appellant applied for development plan consent from the Council to remove the tree through its agent, Mr Varun Agheda.
4. The land is and was at all material times according to the Development Plan for the Council (consolidated 21 April 2016), located in the Residential Zone and in the Residential Policy Area A450.
5. The application was considered by the Council's Development Assessment Panel at its meeting on 13 February 2017.

6. By notice dated 14 February 2017, a copy of which is attached, the Council notified the Appellant of its decision to refuse development plan consent to the application.

### Grounds of Appeal

1. The tree is a regulated tree and not a significant tree as identified by the Council.
2. Having regard to the circumstances and all the relevant provisions of the Development Plan, the proposed development warranted development plan consent.

DATED the 12<sup>th</sup> day of April 2017

**BOTTEN LEVINSON**

Per:  Solicitors for the Appellant

TO: The Registrar  
Environment, Resources and Development Court  
Sir Samuel Way Building  
Victoria Square  
ADELAIDE SA 5000

AND TO: The Chief Executive Officer  
City of Prospect  
PO Box 171  
PROSPECT SA 5082



## CITY OF PROSPECT

128 Prospect Road, Prospect SA 5082

Telephone (08) 8269 5355 Facsimile (08) 8269 5834

To: Mr V Agheda  
59 Pulsford Road  
PROSPECT SA 5082

FILE COPY

## DECISION NOTIFICATION

Development Application: 050/256/2016

Dated: 14/07/2016

Registered: 14/07/2016

Location: 59 Farrant Street PROSPECT

Description: Remove Significant Tree - Willow Myrtle

The following decisions have been made in respect of the development application:

NATURE OF DECISION	DETERMINATION	NO. OF CONDITIONS	DATE OF DECISION
Development Plan Consent	Refused	-	13/02/2017
Building Rules Consent	Not applicable	-	-
Development Approval	Refused	-	13/02/2017

- Reason(s) for the refusal of the application and any appeal rights that exist under the *Development Act 1993* are provided on the following page(s).
- The application was determined to be a **Category 1** application for the purpose of public notification. Nil representation(s) were received from third parties.
- The development authorisation (consent or approval) granted herein remains operative for a period of 12 months from the date of the decision.

Signed:  Chief Executive Officer Delegate

Date: 14/2/2017

## Reason(s) for refusal and advisory notes

### Reason(s) for Refusal

Pursuant to the Development Act 1993, as amended, Development Plan Consent be refused to DA 050/256/2016 for Removal of Removal of a Significant Tree – *Agonis flexuosa* (Willow Myrtle) at 59 Farrant Street, Prospect (CT 5934/617), as the proposal would:

- Result in the removal of a significant tree that is worthy of retention, without giving due regard to all reasonable remedial treatments available.

As such, the proposed development would be at variance with the relevant provisions of the Prospect (City) Development Plan and in particular:

- Council Wide Objectives 41; and
- Council Wide Principles of Development Control 346(a), 349.

### Advisory Notes

The following advisory notes are provided for your information:

- (1) **Your Appeal Rights:** Pursuant to Section 86(1)(a) of the *Development Act 1993*, you have the right of appeal to the Environment, Resources and Development Court against either:
- a) a refusal of consent; or
  - b) any condition(s) that have been imposed on a consent.

Any such appeal must be lodged with the Court within two (2) months from the day on which you receive this notification or such longer period as may be allowed by the Court.

The Environment, Resources and Development Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide SA 5000 (Postal Address: GPO Box 2465, Adelaide SA 5001).

Our ref: THG/217067

9 May 2017

Ms Susan Giles  
Development Officer, Planning  
128 Prospect Road  
PROSPECT SA 5082

By email: susan.giles@prospect.sa.gov.au

Dear Susan

**Farrant Street Pty Ltd v City of Prospect (ERDC 98 of 2017) – removal of regulated tree  
– 59 Farrant Street, Prospect**

This firm acts for the appellant, Farrant Street Pty Ltd in relation to the above appeal to the ERD Court against the Council's decision to refuse DA 050/256/2016.

To avoid the expense and inconvenience to all parties of litigating the matter, our client wishes to put further material to the Council for its consideration. Our client also wishes to incorporate the planting of a substantial replacement tree and a replacement street tree as part of its proposal.

In support of these submissions please find enclosed the following documents:

- (a) Arboricultural assessment report of Dr Dean Nicolle, dated 28 March 2017; and
- (b) Visual assessment report of Mr James Hayter, dated 1 May 2017.

**The tree**

The Appellant seeks approval for the removal of a Willow Myrtle (*Agonis flexuosa*) (**the tree**) growing in the front garden of 59 Farrant Street, Prospect (**the land**).

According to Dr Nicolle, the tree is 8.6 metres tall and has an average crown spread (diameter) of 10.5 metres. Dr Nicolle notes that:

*The height and overall crown size of the tree is very small relative to most other regulated or significant trees as defined by the Development Act 1993. This is due to the relatively stocky trunk, which is typical of the species.*

*Within the species (*Agonis flexuosa*), the subject tree is more typical in terms of its size, but the subject tree is certainly not a large or outstanding specimen of the species.*

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As to the longevity and suitability of the tree, Dr Nicolle expresses the view that:

*Agonis flexuosa is a relatively short-lived species (relative to many other tree species), with individuals over 100 years old being rare. The species is only mildly drought tolerant, and trees of the species in Adelaide can suffer or die from prolonged summer drought unless supplementary irrigation is provided in such times.*

*Agonis flexuosa is shallow (surface) rooted, and it is therefore relatively intolerant to soil disturbances (excavation, fill and compaction) close to the tree.*

*In its current situation, in the absence of any site redevelopment, and assuming supplementary summer irrigation in dry years, the subject tree has a life expectancy of 10 – 20+ years. However, in the absence of supplementary summer irrigation in dry years, or if the site were redeveloped, the tree's life expectancy would be much reduced.*

It is also Dr Nicolle's opinion that the tree has likely caused the death of the adjacent street tree through competition for soil moisture.

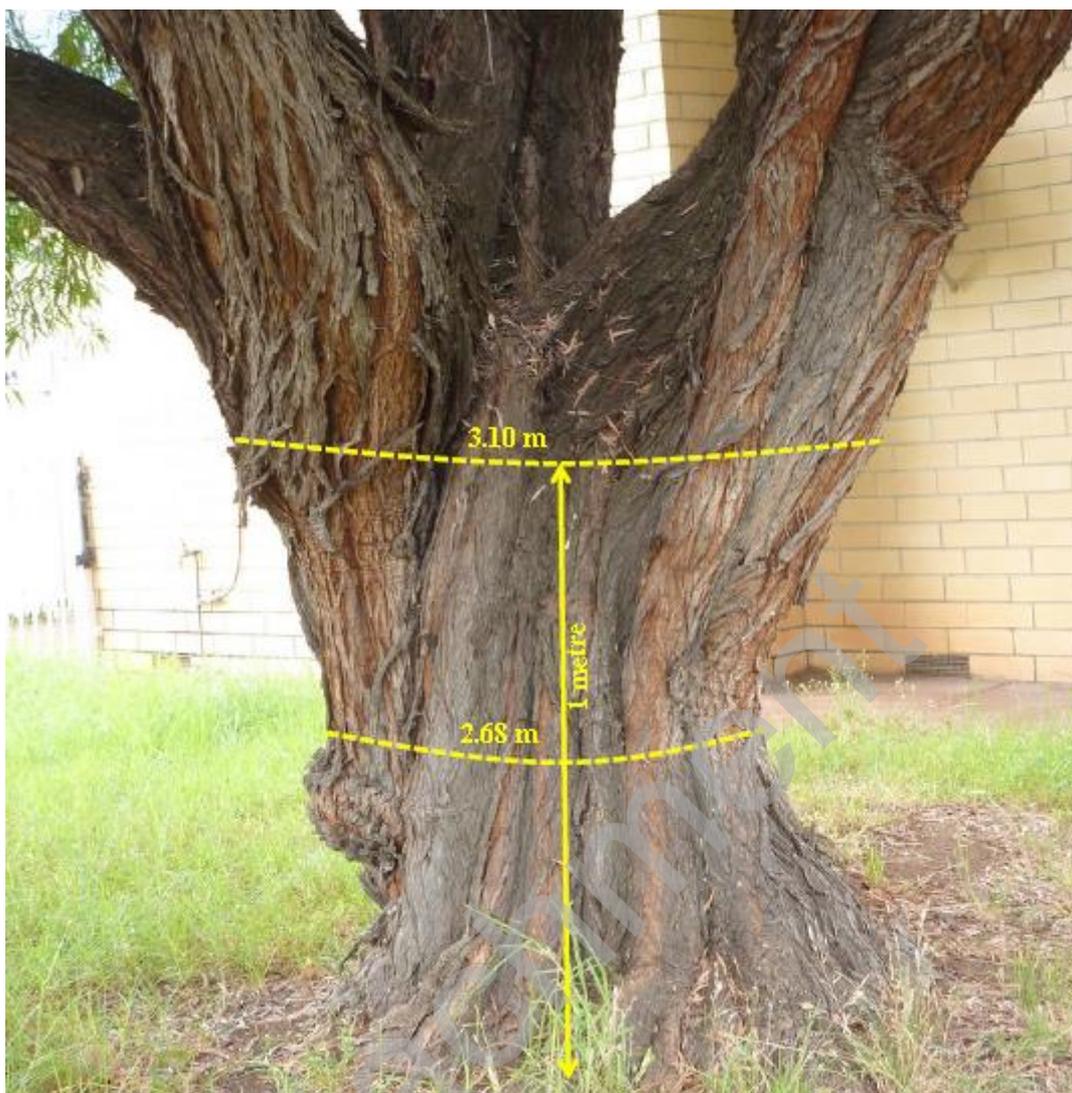
### **Significant or Regulated?**

In the course of this application there have been conflicting opinions expressed about whether the tree is a regulated or significant tree. The Council ultimately assessed the application as being for the removal of a significant tree.

However, it is apparent from Dr Nicolle's report that the tree should be assessed as a regulated tree.

In his report, Dr Nicolle outlines that the trunk of the tree, at one metre above ground level, is 3.10 metres in circumference. However, Dr Nicolle states that "*this circumference measurement is an artefact of the trunk flaring into a number of primary leaders below one metre above ground level... and is therefore an unrealistic representation of the true circumference of the tree.*"

This is demonstrated by the below image:



Dr Nicolle goes on to state that “A more acceptable measurement of the true trunk circumference of the tree is gained by measuring the trunk at its narrowest point below one metre above ground level and below the flaring of the trunk...”

According to Dr Nicolle, “this is the approach used by Australian standard 4970-2009 Protection of trees on development sites, to deal with trees with atypical trunk morphologies, such as flaring.”

Employing the method suggested by Dr Nicolle, the trunk circumference below the flaring is 2.68 metres, making it ‘regulated’ as defined by the Act.

The proposed removal should therefore be assessed on the basis that it is a regulated tree.

To a degree this is a question of semantics. The Council (or the Court) is required to make a planning judgment having regard to all of the circumstances, including the particular characteristics of the tree. It is submitted that regardless of whether the tree is assessed against the regulated or significant tree provisions of the Development Plan the proposal warrants consent.

### **The Development Plan provisions**

The land is located in the Residential Zone under the relevant consolidation of the Council’s Development Plan (consolidated 21 April 2016).

The land is also situated within the Residential Policy Area 450.

The provisions of the Development Plan of most relevance to this application are Council Wide (CW) Regulated Trees Objective 39 and 40 and Principle of Development Control (PDC) 344.

CW Regulated Tree Objective 39 and 40 contemplate the following:

39. *The conservation of regulated trees that provide **important aesthetic and/or environmental benefit.***
40. *Development in balance with preserving regulated trees that demonstrate one or more of the following attributes:*
  - (a) *significantly contributes to the character or visual amenity of the locality;*
  - (b) *indigenous to the locality;*
  - (c) *a rare or endangered species;*
  - (d) *an important habitat for native fauna.*

*(my emphasis)*

CW Regulated Trees PDC 344 states that:

344. *A regulated tree should not be removed or damaged other than where it can be demonstrated that one or more of the following apply:*
  - (a) *the tree is diseased and its life expectancy is short;*
  - (b) *the tree represents a material risk to public or private safety;*
  - (c) *the tree is causing damage to a building;*
  - (d) *development that is reasonable and expected would not otherwise be possible;*
  - (e) *the work is required for the removal of dead wood, treatment of disease, or is in the general interest of the health of the tree.*

Similar provisions of course apply to significant trees and the tests for retention and removal are largely the same.

### **Development Plan – approach to assessment**

In considering the above provisions, it is important to be mindful of the well established principles for the interpretation of Development Plans. A Development Plan is a “practical code calling for a practical application”<sup>1</sup> and is to be approached on the basis that it expresses planning objectives and principles rather than hard and fast rules having mandatory effect.<sup>2</sup>

It is clear that the Development Plan seeks to protect regulated trees that provide important environmental or aesthetic benefits. It does not seek to protect all regulated trees per se.

If a tree does not provide an important aesthetic or environmental benefit (and accordingly does not warrant preservation under CW Objective 39 and 40), it is not necessary to go on and consider the “criteria for removal” set out in PDC 344.

<sup>1</sup> *City of Mitcham v Freckman* (1999) 74 SASR 56

<sup>2</sup> See *St Ann’s College v Corporation of the City of Adelaide & Anor* (1999) SASC 479; and *Corporation of the Town of Walkerville v Adelaide Clinic Holdings Pty Ltd* (1985) 38 SASR 161.

In *Summers v city of Unley*<sup>3</sup> the Environment, Resources and Development Court considered provisions broadly similar to the Objectives and PDC outlined above, albeit relating to “significant trees” as defined under the legislation in force at the time. In that case, the Court considered that, in effect, only certain trees, rather than every tree, should be made worthy of retention subject to the removal “criteria” similar to that in PDC 344:

*it could not be the intended consequences of the Development Plan provisions that every tree, regardless of species, characteristics, benefit provided, contribution to amenity, should be retained unless it is diseased and will die, presents a safety risk to persons, buildings or valued structures... that cannot be the intended consequences of the Development Plan provisions; one can readily imagine examples to show how ridiculous such a result would be, and it would fly in the face of the objects of Development Plans.*

The Court went on to consider that the above “criteria” must be read in the context of a provision expressed similarly to Objective 39. The effect under the present provision is that only trees which provide “important aesthetic and environmental benefit” should be subjected to the “test” set out in PDC 344.

With those principles in mind, I turn now to consider the proposed development against the provisions of the development plan.

### **Assessment against the Development Plan**

Objective 39 provides an overarching policy objective, which contemplates the conservation of regulated trees only where they provide “important aesthetic and environmental benefit”.

Objective 40 then sets out a series of attributes to be used as a guide in determining whether, on balance, a regulated tree provides an “important aesthetic and environmental benefit” such that it is worthy of preservation. I turn now to consider those attributes.

#### **1. Objective 40(a) – significantly contributes to the character or visual amenity of the local area?**

The tree is the subject of a detailed visual assessment by Mr (Professor) James Hayter. Mr Hayter is a qualified and experienced landscape architect and urban designer whose expert evidence has been accepted by the ERD Court and other courts on numerous occasions.

Mr Hayter has assessed the value of the tree in terms of its contribution to the character and visual amenity of the locality. In this regard, Mr Hayter has considered CW Regulates Trees Objective 40(a).

In relation to the tree’s contribution to the locality’s visual amenity and character, Mr Hayter states:

*“From the visual assessment carried out... I conclude that the subject tree does **not** make a significant contribution to the character or visual amenity of the locality.”*

Thus, Mr Hayter’s clear conclusion is that the tree does not satisfy Objective 40(a).

Mr Hayter has also assessed the removal of the tree against the provisions of Residential Policy Area A450. Mr Hayter has expressed the view that the removal of the tree and its replacement with a suitable new tree will be consistent with the desired character for the Policy Area.

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<sup>3</sup> [2002] SAERDC 113 at [32]  
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**2. Objective 40(b) – is the tree indigenous to the locality?**

The tree is not indigenous to the locality. As noted by Dr Nicolle the species is indigenous to coastal areas in the south-western part of Western Australia.

**3. Objective 40(c) – is the tree a rare or endangered species?**

The tree is of a species which is neither rare or endangered.

**4. Objective 40(d) – does the tree provide an important habitat for native fauna?**

Having regard to the report of Dr Nicolle, the tree does not provide an important habitat for native fauna.

Thus, the tree fails to meet any of the criteria set out in Objective 40 and to that end, could not be said to provide “important aesthetic and/or environmental benefit”. It follows that as the tree does not satisfy Objective 39 and 40 it does not warrant retention and it is unnecessary to go on to consider the test in PDC 344.

**Replacement trees**

As part of the proposal for reconsideration, our client is offering to plant and maintain a substantial replacement tree on the land.

In accordance with the recommendations of Mr Hayter, the proposed replacement tree will be a *Sophora japonica* (Japanese pagoda tree), which has a maximum height of up to 20 metres but which would not compromise the future development of the land. It is intended that the tree would be semi-mature with a height of not less than 4 metres at time of planting so as to provide an immediate visual effect.

The appellant would abide a condition requiring the replacement tree to be planted within 12 months of removal of the subject tree and maintained thereafter.

In addition the appellant is willing to arrange for the replacement of the deceased street tree with another *Fraxinus ornus* (manna ash) or such other species nominated by the Council, and would abide a condition to that effect.

As is evident from the report of Dr Nicolle, the death of the street tree was most likely caused by “*the lack of soil water, associated with the poor drought tolerance of the species in conjunction with completion for soil moisture from the adjacent subject tree.*” It is therefore proposed that a replacement street tree be planted in conjunction with the replacement tree on the land, to ensure that neither tree dominates the other.

As noted by Dr Nicolle, “a replacement street tree, of any species, is much more likely to survive and will grow faster in the absence of the subject tree”.

Likewise, Mr Hayter concludes that:

*Removal of the subject tree and replacement with other suitable trees and garden, as well as replacement of the street tree ... will, in my opinion, result in a much improved visual and practical outcome for the resident and those within the locality.*

(emphasis added)

**Conclusion**

As is evident from the reports of Mr Hayter and Dr Nicolle, the tree does not possess characteristics which render it worthy of retention.

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The replacement of the tree on the land with a semi-mature tree, in combination with replacement of the dead street tree will within a relatively short period provide a significantly improved long term outcome for the land and the locality.

The proposal has significant merit and is worthy of development plan consent.

I look forward to the Council's consideration of this submission in the hope that the parties can avoid the need for a contested hearing.

Yours faithfully



**Tom Game**

**BOTTEN LEVINSON**

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

Attachment

**Calyptra Pty Ltd**  
trading as

**Dean Nicolle**

Ph.D.; B.Sc.(Hons.) Botany; B.App.Sc. (Natural Resource Management)

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Arboriculture - Botany - Ecology - Eucalypt Research

**Tree Report –  
59 Farrant Street, Prospect, SA**

**Arboricultural assessment of an  
*Agonis flexuosa* (willow myrtle) tree**



Arboricultural assessment and report requested by Tom Game of *Botten Levinson Lawyers*, on the 24<sup>th</sup> of March 2017.

Arboricultural report prepared by Dean Nicolle following a site visit and tree inspection on the 28<sup>th</sup> of March 2017.

**Report dated the 28<sup>th</sup> of March 2017.**

## BACKGROUND

A mature *Agonis flexuosa* (willow myrtle) tree in the front yard of 59 Farrant Street in Prospect, South Australia (the 'subject tree', see Figure 1). I have been asked to provide an arboricultural assessment of this tree, and specifically to compile a written report to address a number of questions regarding the tree.

This report provides some generic information regarding the species (*Agonis flexuosa*), following which each of the seven questions is addressed.



Figure 1. The subject tree, looking approximately south-west from Farrant Street.

## GENERIC SPECIES INFORMATION

### Species:

*Agonis flexuosa* var. *flexuosa* ('willow myrtle'; also known as 'willow peppermint', 'Western Australian peppermint' and 'Swan River peppermint').

### Distribution:

*Agonis flexuosa* is an evergreen species native to coastal regions in the far south-west of Western Australia, from north of Perth to near Bremer Bay. It varies in habit from a dense shrub in exposed coastal localities to a tree up to 15 metres tall in more sheltered situations, such as in forest vegetation where it occurs as an understorey species. The species is not considered rare or endangered. The species is not native to South Australia.

*Agonis flexuosa* has been commonly planted throughout the medium to high rainfall areas of southern Australia, particularly in urban areas including Melbourne and Adelaide. The species is common throughout the City of Prospect council region, where it is often grown as a street tree or in parks and in private gardens where it is grown for shelter, shade and as an ornamental tree.

### Identification:

*Agonis flexuosa* is a distinctive species and is unlikely to be confused with any other species in South Australia.

### Tree health:

*Agonis flexuosa* is usually a relatively short-lived species, with individuals over 100 years being rare. The species is shallow (surface) rooted, and it is therefore relatively intolerant to soil disturbances (excavation, fill and compaction) close to the tree.

*Agonis flexuosa* is only mildly drought tolerant, and trees of the species in Adelaide can suffer or die from prolonged summer drought unless supplementary irrigation is provided.

### Risks associated with the species:

The dense and crowned trunk division commonly seen in *A. flexuosa* can lead to complete whole-of-tree structural failure (in high-wind conditions) in older and larger individuals.

*Agonis flexuosa* is not subject to sudden branch failure in calm, warm weather as is the case with some trees.

### Key references:

Boland, Brooker, Chippendale, Hall, Hyland, Johnson, Kleinig, McDonald & Turner (2006). *Forest Trees of Australia 5<sup>th</sup> edition*. Pp. 198 – 199.

## QUESTIONS

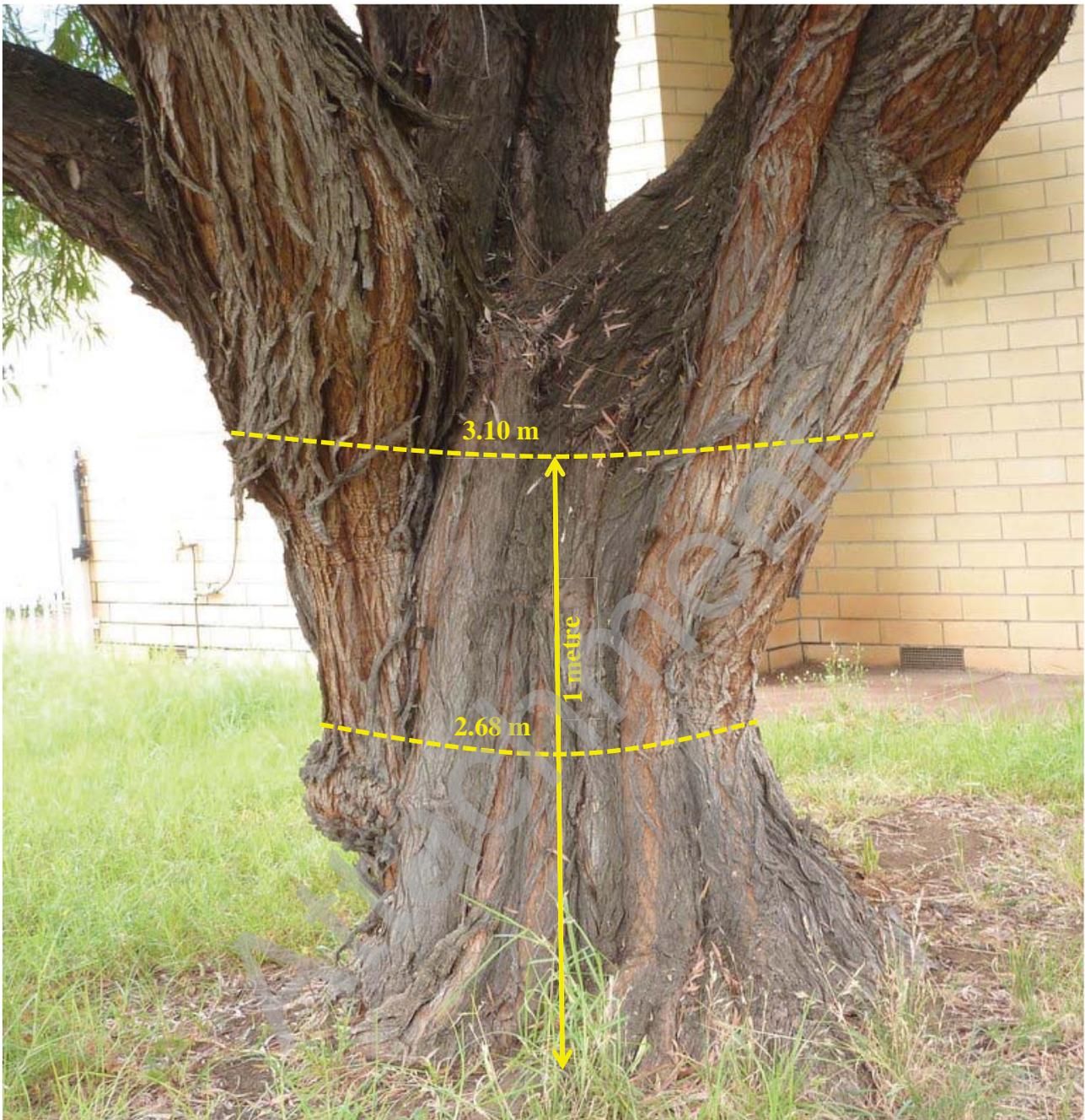
***1 What are the dimensions of the subject tree? Is the subject tree correctly a regulated or significant tree?***

The tree is 8.6 metres tall (laser-measured) and has an average crown spread (diameter) of 10.5 metres.

The trunk of the tree, at one metre above ground level, is 3.10 metres in circumference. This measurement would make the tree 'significant' as defined by the *Development Act 1993*. However, this circumference measurement is an artifact of the trunk to flaring into a number of primary leaders below one metre above ground level (see Figure 2), and is therefore an unrealistic representation of the true circumference of the tree.

A more acceptable measurement of the true trunk circumference of the tree is gained by measuring the trunk at its narrowest point below one metre above ground level and below the flaring of the trunk into a number of primary leaders. This is the approach used by *Australian Standard 4970–2009 Protection of trees on development sites* to deal with trees with atypical trunk morphologies, such as flaring. Using this approach, the trunk circumference at its narrowest point below one metre above ground level (at 0.5 metres above ground level in this case) is 2.68 metres (see Figure 2). This measurement would make the tree 'regulated' as defined by the *Development Act 1993*.

In this case, considering the trunk flares into a number of primary leaders at one metre above ground level, and the unrealistic representation of the true circumference of the tree when measured at this point, I consider that measuring the trunk at its narrowest point below one metre above ground level is most appropriate. Therefore, I consider that this tree is 'regulated' as defined by the *Development Act 1993*.



*Figure 2. The primary structure of the tree; looking approximately south-east from the subject site, indicating the various measurements of the tree. The trunk circumference measurement at one metre above ground level is an artifact of the trunk to flaring into a number of primary leaders below one metre above ground level, and is therefore an unrealistic representation of the true circumference of the tree. A more acceptable measurement of the trunk circumference is gained by measuring the trunk at its narrowest point below one metre above ground level and below the flaring of the trunk into a number of primary leaders (this is the approach used by Australian Standard 4970–2009 Protection of trees on development sites to deal with trees with atypical trunk morphologies, such as flaring).*

**2 How does the height and relative size of the tree compare with other trees of regulated or significant girth size?**

The height and overall crown size of the tree is very small relative to most other regulated or significant trees as defined by the *Development Act 1993*. This is due to the relatively stocky trunk, which is typical of the species.

Within the species (*Agonis flexuosa*), the subject tree is more typical in terms of its size, but the subject tree is certainly not a large or outstanding specimen of the species. The largest individuals of the species of which I am aware is a tree with a height of 11.0 metres and a trunk circumference of 6.10 metres (Busselton WA) and a tree with a height of 12.0 metres and a trunk circumference of 6.10 metres (Perth WA).

Within the Adelaide metropolitan area, the tallest individual of the species I have measured is a tree 14.0 metres tall (Rosslyn Park) and largest-girthed individual of the species I have measured is a tree with a trunk circumference of 6.05 metres (Norwood).

**3 Is the tree indigenous to the locality?**

No. The species is indigenous to coastal areas in the south-western part of Western Australia only.

**4 Is the tree a rare or endangered species?**

No. The species is not considered to be rare or endangered in the wild. In cultivation, the species continues to be widely and commonly grown.

**5 Does the tree provide an important habitat for native fauna?**

No. The tree is a reproductively mature specimen of a locally exotic Australian native species. No faunal hollows are evident in the tree.

**6 What is the likely impact of the tree on the health of the adjacent (dead) street tree?**

The north side of Farrant Street is lined by mature trees of *Sophora japonica* (Japanese pagoda tree) and some *Lophostemon confertus* (Queensland box). The southern side is lined by semi-mature trees of *Fraxinus ornus* (manna ash) and some mature *Lophostemon confertus* (Queensland box).

The street tree in front of 59 Farrant Street is a dead, semi-mature specimen of *Fraxinus ornus* (manna ash). This tree likely died from lack of soil water, associated with the poor drought tolerance of the species in conjunction with competition for soil moisture from the adjacent subject tree (see Figure 3).

A replacement street tree, of any species, is much more likely to survive and will grow faster in the absence of the subject tree.



*Figure 3. The subject tree, looking approximately west along Farrant Street. The superimposed yellow arrow indicates a dead, semi-mature specimen of *Fraxinus ornus* (manna ash). This tree likely died from lack of soil water, associated with the poor drought tolerance of the species in conjunction with competition for soil moisture from the adjacent subject tree.*

## 7 What is the life expectancy of the tree?

*Agonis flexuosa* is a relatively short-lived species (relative to many other tree species), with individuals over 100 years old being rare. The species is only mildly drought tolerant, and trees of the species in Adelaide can suffer or die from prolonged summer drought unless supplementary irrigation is provided in such times.

*Agonis flexuosa* is shallow (surface) rooted, and it is therefore relatively intolerant to soil disturbances (excavation, fill and compaction) close to the tree.

In its current situation, in the absence of any site redevelopment, and assuming supplementary summer irrigation in dry years, the subject tree has a life expectancy of 10 – 20+ years. However, in the absence of supplementary summer irrigation in dry years, or if the site were redeveloped, the tree's life expectancy would be much reduced.

I thank you for the opportunity to provide this report and trust it meets your requirements. If you require further information or clarification please contact me for assistance.



Dean Nicolle  
Ph.D.; B.Sc. (Hons.) Botany; B.App.Sc. (Natural Resource Management).

## VISUAL ASSESSMENT OF A REGULATED TREE IN PROSPECT



**Report prepared by**  
**JAMES HAYTER**

**Registered Landscape Architect**

Director

Oxigen, Landscape Architects

98-100 Halifax Street

ADELAIDE SA 5000

1 May 2017

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## **1.0 INTRODUCTION**

### **1.1 Brief**

This report is prepared in response to a request from Botten Levinson, Lawyers, for a visual assessment of a regulated tree located in the front yard of 59 Farrant Street, Prospect. Specifically, I have been asked to consider:

1. Whether the tree provides an important aesthetic benefit, and particularly:
  - a. Whether it significantly contributes to the character or visual amenity of the locality for the purpose of Council-wide Objective 40.
  - b. Whether the proposed removal of the tree and its replacement will be consistent with the provisions of Residential Policy Area 450.
2. Your recommendation for a replacement tree and a replacement street tree;
3. Whether the replacement trees will result in a better outcome for the street than the existing situation.

### **1.2 Background**

In forming the opinion contained within this report, I have considered the context and locality in which the subject tree is located. The report includes a brief summary of the local landscape character.

The report also includes my assessment against relevant provisions on the Prospect (City) Development Plan. This includes assessment against Council-wide Objective 40, namely:

Objective 40: Development in balance with preserving regulated trees that demonstrate one or more of the following attributes:

- (a) significantly contributes to the character or visual amenity of the locality.

An assessment is also made against the more general provision of the Residential Policy Area A450.

## 2.0 METHODOLOGY

### 2.1 Inspection

I identified key viewpoints in January 2017 to form a preliminary opinion and inspected the site and locality again on 5 April 2017 and 2 May 2017 prior to completing this report. I viewed the subject site only from publicly-accessible areas; that is, the roads and road verges within the locality. I have not viewed or considered the visual impact of removal of the tree or pruning from private land.

I chose to carry out my analysis from evidence on-site rather than purely a desk-top study. I consider the former more reliable given the complexity of viewing an object and the effect existing buildings and vegetation have on views.

### 2.2 Photography

Photos included in this report were taken using a digital SLR camera with a 60mm focal lens. I understand this focal length approximates that of the human eye.

### 2.3 Visual assessment

The analysis within this report includes:

- **Location** - the location from which I viewed the subject tree.
- **Description** - description of the existing view.
- **Visibility** - opinion on the tree's visibility from the viewpoint.
- **Significance** - opinion on the viewpoint's significance considering the existing landscape character and visibility (ie. whether the viewpoint is likely to affect many people, such as from a main road, or a lesser number of people, such as from a minor road).
- **Likely Visual Impact** - my opinion on the potential visual impact of removal or pruning on the visual amenity of the locality.

### 3.0 DEVELOPMENT PROPOSAL

#### 3.1 Description

The proposal is for removal of a Willow Myrtle (*Agonis flexuosa*). Whilst not particularly tall, the subject tree has a full canopy that, apart from the driveway, almost entirely fills the front garden of 59 Farrant Street.

From my own observation and measurements, I note:

**Species:** *Agonis flexuosa*.

**Size:** Approximately 8m.

**Previous Pruning:** Minor evidence of previous pruning.

**Tree structure and canopy:** Rounded canopy habit. I would describe the subject tree as having a thick, full canopy that is visually dense.



**Figure 01:** Location of the subject tree in the front yard at 59 Farrant Street, Prospect.

### 3.2 Locality

The subject tree is located within the front yard of a residential property at 59 Farrant Street in Prospect. This section of Farrant Street lies between Main North Road to the east and Gray Street which extends three blocks in a north-south direction. Prospect Road lies further to the west than Gray Street.

The locality considered in the preparation of this report is shown in figure 02. The locality is defined in general terms by the potential visibility of the tree from the surrounding areas. I conclude that from within the locality, the tree is generally visible only from within Farrant Street itself, and then from a limited section of the street that extends from, approximately, 51 Farrant Street to 71 Farrant Street. Views to the subject tree are either blocked or filtered by other existing vegetation comprising street trees or trees in front gardens. I have extended the locality slightly further than the locations from which the subject tree is visible - to the west to Gray Street which, by the configuration of the intersection, forms a change in character within Farrant Street between east and west of the intersection.



**Figure 02:** Aerial image illustrating the location of the subject tree in the context of Farrant Street (Source: Nearmaps 2017).

#### 4.0 EXISTING LANDSCAPE QUALITY

The landscape character of the locality reflects the residential land use of this area of Prospect. I consider the more commercial character of Main North Road to the east to be separate from the residential character of Farrant Street and outside of the locality.

The landscape character of the locality is, in my opinion, well established and attractive, comprising street trees along Farrant Street and front and back gardens which contribute to the overall amenity and attractiveness of the area. Generally, housing is single storey and of an older style, with some newer infill housing, contributing towards an established and attractive appearance overall. Street trees are mixed in character and type with gaps in the planting where street trees are missing or dead, as in the case of the street tree in front of 59 Farrant Street. The lower scale, mixed species and somewhat intermittent presence of street trees works well in conjunction with the adjacent gardens and planting rather than dominating the landscape character, as is the case with the street running parallel to Farrant Street - Gordon Road - immediately to the south. where tall, mature street trees line the street.

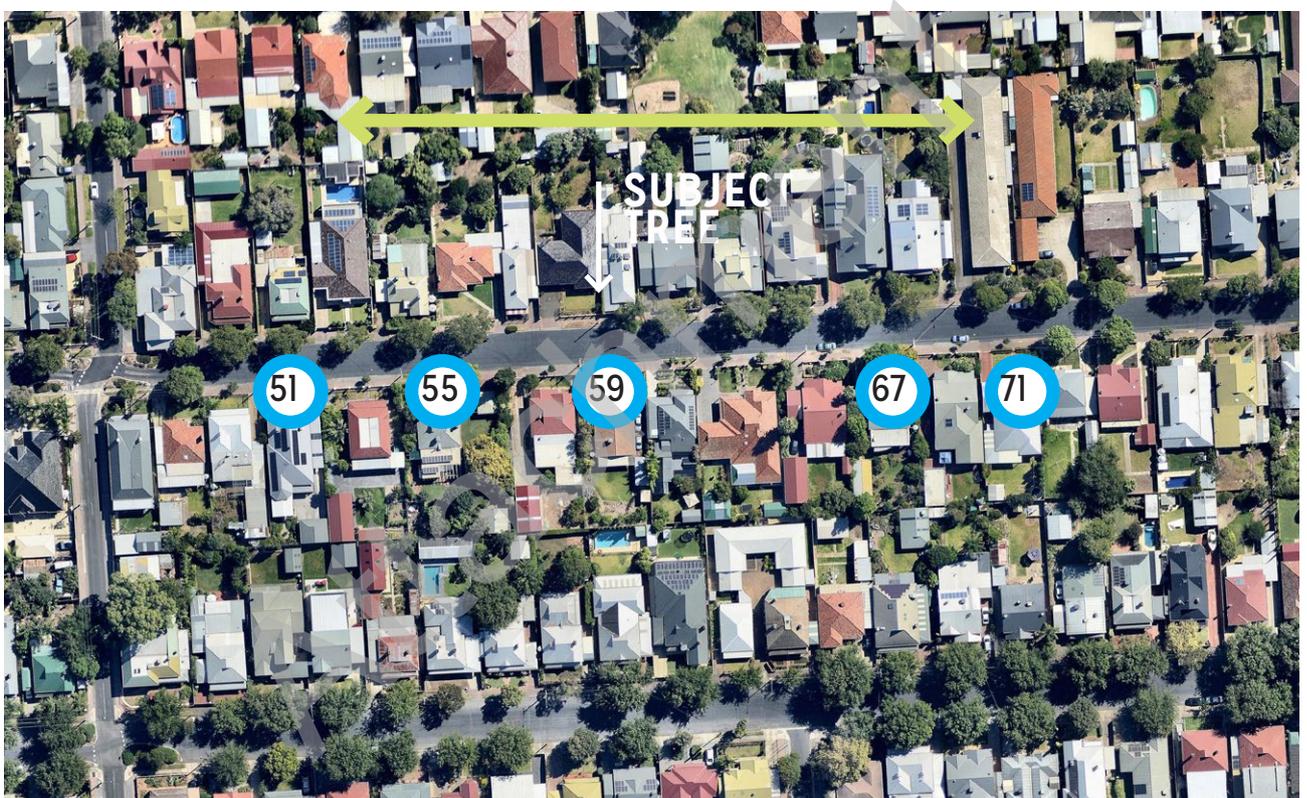
Attachment

## 5.0 VISUAL ASSESSMENT

### 5.1 Photographic viewpoints

Figure 03 identifies the location of the subject tree located in the front yard of 59 Farrant Street, Prospect. The subject tree is visible only from a limited length of Farrant Street that extends from locations approximately adjacent to 51 Farrant Street and approximately adjacent to 71 Farrant Street. The subject tree is not visible from the adjacent streets; namely, Gray Street, Percy Street, Main North Road or Gordon Street.

To gauge the visual impact of the subject tree, photographs were taken adjacent to 51, 55, 59, 67 and 71 Farrant Street. Travelling west along Farrant Street from Main North Road, views to the subject tree are effectively blocked by an existing Jacaranda tree located in the front yard of 67 Farrant Street. Travelling east along Farrant Street from Gray Road, views to the subject tree are blocked approximately from 51 Farrant Street and then further to the west.



**Figure 03:** Photographic viewpoints and approximate extent of visibility of subject tree along Farrant Street (Source: Nearmaps 2017).

## 5.2 Viewpoints

### 5.2.a Viewpoint 01

<b>Location</b>	Adjacent to 71 Farrant Street.
<b>Description</b>	Views towards the subject tree from the street and footpath.
<b>Visibility</b>	The subject tree is blocked by existing vegetation in the front yard of 67 Farrant Street.
<b>Significance of views</b>	Tree is not visible.
<b>Likely visual impact of removal</b>	No impact.



**Figure 04:** Viewpoint 01 adjacent to 71 Farrant Street (Source: Nearmaps 2017).



**Figure 05:** Subject tree viewed from adjacent 71 Farrant Street. Views to the tree are blocked by vegetation in the front yard of 67 Farrant Street.



**Figure 06:** The visual effect of removal of the tree is negligible from this viewpoint. From this point on heading west, the subject tree comes more into view.

### 5.2.b Viewpoint 02

<b>Location</b>	Adjacent to 67 Farrant Street.
<b>Description</b>	Views towards the subject tree from the road and footpaths.
<b>Visibility</b>	The subject tree is visible in the front yard of 59 Farrant Street. The visibility of the subject tree is increased through the absence or lack of height of the street trees in this section of Farrant Street
<b>Significance of views</b>	Given the street trees and other trees and vegetation in front yards, the subject tree blends into this vegetation rather than stands out in the streetscape.
<b>Likely visual impact of removal</b>	Low.



Figure 07: Viewpoint 02 adjacent to 67 Farrant Street (Source: Nearmaps 2017).



**Figure 08:** Subject tree viewed from adjacent 67 Farrant Street.



**Figure 09:** Subject tree digitally removed from view. There is a minor but noticeable visual effect from removal of the subject tree, although this effect is reduced by the presence of other trees in gardens and on the verge.

### 5.2.c Viewpoint 03

<b>Location</b>	Adjacent to 55 Farrant Street.
<b>Description</b>	Views east towards the subject tree from the road and northern footpath.
<b>Visibility</b>	The subject tree is viewed behind existing street trees located on the southern verge adjacent to 55 Farrant Street. The subject tree becomes more visible as the viewer moves further east and in front of the street trees.
<b>Significance of views</b>	Low due to the presence of other trees and vegetation of similar height.
<b>Likely visual impact of removal</b>	Low. The visual impact is medium when the viewer moves further east and in front of the street trees.



**Figure 10:** Viewpoint 03 adjacent to 55 Farrant Street (Source: Nearmaps 2017).



**Figure 11:** Subject tree viewed from adjacent 55 Farrant Street. Views to the tree are seen through other vegetation, including the existing street trees on the southern verge.



**Figure 12:** The visual effect of removal of the tree. Whilst removal of the tree is noticeable from this viewpoint, the visual effect is considered to be low due to other existing vegetation in front gardens. Replacement of the street tree in front of 59 Farrant Street will improve the streetscape overall.

### 5.2.c Viewpoint 04

<b>Location</b>	Adjacent to 51 Farrant Street.
<b>Description</b>	Views east towards the subject tree from the road and northern footpath.
<b>Visibility</b>	Views to the subject tree are blocked by the existing street trees on the southern verge.
<b>Significance of views</b>	Low as the subject tree is only slightly visible from this viewpoint.
<b>Likely visual impact of pruning/removal</b>	No impact.



**Figure 13:** Viewpoint 04 adjacent to 51 Farrant Street (Source: Nearmaps 2017).



**Figure 14:** Subject tree viewed from adjacent 51 Farrant Street. Views to the tree are interrupted by existing vegetation, particularly the street tree adjacent to 55 Farrant Street. As the viewpoint moves closer to 59 Farrant Street, the subject tree comes more into view from this viewpoint on.



**Figure 15:** The visual effect of removal of the tree is negligible from this viewpoint. From this point travelling to the east, the subject tree comes more into view.

#### 5.4 Visual assessment summary

<b>Viewpoint</b>	<b>Location</b>	<b>Significance</b> (low, medium, high, very high)	<b>Likely visual impact of removal</b> (low, medium, high, very high)
01	Adjacent 75 Farrant	<b>Low</b>	<b>Not visible</b>
02	Adjacent 67 Farrant	<b>Low</b>	<b>Low</b>
	Adjacent 59 Farrant	<b>Low</b>	<b>Medium</b>
03	Adjacent 55 Farrant	<b>Low</b>	<b>Low</b>
04	Adjacent 51 Farrant	<b>Low</b>	<b>Not visible</b>

Attachment

## 6.0 ASSESSMENT AGAINST THE PROSPECT (CITY) DEVELOPMENT PLAN

Whether it significantly contributes to the character or visual amenity of the locality for the purpose of Council-wide Objective 40.

Objective 40: Development in balance with preserving regulated trees that demonstrate one or more of the following attributes:

- (a) significantly contributes to the character or visual amenity of the locality.

From the visual assessment carried out and summarised in this report, I conclude that the subject tree does not make a significant contribution to the character or visual amenity of the locality.

Whether the proposed removal of the tree and its replacement will be consistent with the provisions of Residential Policy Area 450.

Residential Policy Area A450

Within the Desired Character Statement of the Residential Policy Area 450 the provisions describe development that:

*... is of an attractive residential environment consisting of mainly single-storey detached dwellings on large sized allotments, set within heavily landscaped settings with mature streets trees.*

The importance of enhancement of the existing gardens is described:

*... the maintenance and enhancement of the generous and vegetated garden character is still important.*

Further, consideration of integration with the existing landscape is described:

*Front and side garden landscaping is particularly important and should complement and reinforce existing and proposed street tree planting to help enhance the leafy, garden suburb character and the visual separation between houses.*

I note that the subject tree is a mature specimen that physically dominates the front garden of 59 Farrant Street. Given the nature of this species and the difficulty in establishing a garden underneath its canopy, removal will allow increased light and rehabilitation of the growing conditions such that a garden can be established in place of the current bare, unplanted area underneath the canopy. The establishment of a garden in the front yard of 59 Farrant Street in place of a single tree and bare understorey is consistent with the desired character of the policy area; namely, a heavily landscaped setting, an enhanced and generous vegetated garden character, and an enhanced leafy, garden suburb character.

I also note that the existing street tree adjacent 59 Farrant Street is in very poor condition or dead. Replacement of this street tree as a condition of removal of the subject tree supports the desired character in respect to reinforcing the existing street tree planting.

## 7.0 RECOMMENDATIONS FOR A REPLACEMENT TREE

Removal of the subject tree will open the front garden of 59 Farrant Street for the establishment of a garden supportive of the desired character of Residential Policy Area A450. My recommendation would be to replace this tree with a *Sophora japonica* (Japanese pagoda tree). This species is a medium sized deciduous tree that grows well in Prospect. This species is readily available as semi-mature stock from nurseries. Other suitable species that would be appropriate for this location include *Magnolia x. soulangeana* and *Lagerstroemia indica* 'Natchez'. Both are proven species in Adelaide and suitable as garden species.

## 8.0 SUMMARY OF OUTCOMES FROM REMOVAL OF THE SUBJECT TREE

Removal of the subject tree and replacement with other suitable trees and garden, as well as replacement of the street tree to Council's specification (a suitable replacement street tree may be a *Fraxinus ornus* (Manna Ash) to match the adjacent street trees) will, in my opinion, result in a much improved visual and practical outcome for the resident and those within the locality. Subject to Council's approval, replacement of the street tree with a *Fraxinus ornus* (Manna Ash) to match the adjacent street trees. Removal will allow suitable species to be planted consistent with the desired character of the street and Residential Policy Area A450.

Please let me know if I can provide any further commentary or opinion in respect to this matter.

### James Hayter

BArch, MLA, MLAUD, FAILA, AIA, Registered Landscape Architect, Architect

Professor, School of Architecture and Built Environment, University of Adelaide

**AGENDA ITEM:** 5.1

**To:** Development Assessment Panel (DAP) on 13 February 2017

**From:** Susan Giles, Development Officer, Planning

**Proposal:** Removal of a Significant Tree – *Agonis flexuosa* (Willow Myrtle) (DA 050/256/2016)

**Address:** 59 Farrant Street, Prospect (CT 5934/617)

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**SUMMARY:**

**Applicant:** Mr Varun Agheda

**Owner:** Mr Varun Agheda

**Planning Authority:** Council

**Mandatory Referrals:** Nil

**Independent Advice:** Symatree  
Tonkin Consulting

**Public Notification:** Category 1

**Representations/Submissions:** Nil

**Respondent:** Nil

**Development Plan Version:** Consolidated 21 April 2016

**Zone and Policy Area:** Residential Zone (Policy Area A450)

**Key Considerations:** Impact to Dwelling, Risk to Public and Private Safety, Clearance to Overhead Powerlines

**Recommendation:** Refusal

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**ATTACHMENTS:**

Attachment 1 Development Application Form

Attachments 2-3 Locality plans

Attachments 4-5 Photos of site

Attachments 6-7 Proposal plans and supporting information

Attachment 8 Supporting correspondence prepared by applicant

Attachments 9-21 Arborist Report prepared by Mark Lawson on behalf of the applicant

Attachments 22-34 Structural Engineer's Report prepared by Magryn & Associates Pty Ltd on behalf of applicant

Attachments 35-46 Arborist Report prepared by Symatree on behalf of Council

Attachments 47-52 Structural Engineer's Report prepared by Tonkin Consulting on behalf of Council

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## 1. **EXECUTIVE SUMMARY**

- 1.1 The proposal is for the removal of a significant tree that is located in the front yard of a residential allotment. An arborist engaged by the applicant outlines that the tree is causing damage to the building and that the ongoing retention of the tree would cause more damage in the future, and the tree presents a high risk to the public and private safety. A structural engineer engaged by the applicant suggests that removing the tree would prevent any further damage to the dwelling.
- 1.2 Council's consulting arborist identifies that the tree is in good health and not providing any risk to the public or private safety. He suggests it could be retained and risk minimised through pruning work and ongoing management of the tree. A consulting structural engineer advises that the tree is not currently causing, nor is it likely to cause significant damage to the dwelling. The provisions of the Development Plan seek the retention of significant trees, except where it has been demonstrated that all alternative options have been exhausted.
- 1.3 Within the reports provided to Council from the applicant and independent experts, it has not been adequately demonstrated that the tree is causing substantial damage or that all remedial measures have been found ineffective. It is therefore recommended that the proposed development is refused.

## 2. **LOCALITY AND SUBJECT LAND**

### 2.1 **Locality**

- 2.1.1 The immediate locality is residential in nature, featuring predominantly detached dwellings on rectangular shaped allotments. Farrant Street is lined with street trees. The trees located on the northern side of Farrant Street are relatively mature, and along the southern side of Farrant Street, particularly within the immediate locality of the subject land, the trees are young. The existing character of Farrant Street is considered to be a cohesive street presence, with open or low-lying style front fences and established gardens.
- 2.1.2 The broader locality, indicating the location of the subject land within the relevant Zone and Policy Area as described in Council's Development Plan, is described in **Attachment 2**.

### 2.2 **Subject Land**

- 2.2.1 The subject land is located on the southern side of Farrant Street, 250m west of Main North Road and 125m to Gray Street. The land is rectangular in shape and comprises one allotment with a total area of approximately 712m<sup>2</sup>, a frontage of approximately 17.6m to Farrant Street and a depth of approximately 40.5m.
- 2.2.2 Site characteristics include a detached dwelling, and associated garage and garden shed. The subject tree is located in front of the dwelling, approximately 3.5m from the front (northern) boundary and 4m from the existing dwelling. There are no other large trees on the subject land.
- 2.2.3 The subject land is illustrated on **Attachment 3**. Photographs of the subject land are also include for the DAP's reference (refer **Attachments 4-5**).

### **3. PROPOSAL**

- 3.1 The proposal is for the removal of a significant tree, an *Agonis flexuosa* (Willow Myrtle). The tree is said to be causing numerous issues with risk of damage to the dwelling and sewer, risk to the public and private safety with branch failures, within close proximity to overhead powerlines, and ongoing maintenance caused by leaf litter and falling debris.
- 3.2 The tree is not listed in Table Pr/4 of the Prospect (City) Development Plan. The tree has a circumference greater than 3 metres when measured at 1 metre above the natural ground level. Accordingly, the tree is defined as a significant tree as per the *Development Act 1993*.
- 3.3 The proposal has been submitted by Mr Varun Agheda who is one of the property owners. The applicant has provided a tree inspection report prepared by Mr Alan Cameron from Tree Assessment Services (refer **Attachment 6**) and a licensed builder Mr Anthony Rubessa (refer **Attachment 7**), an arboricultural report prepared by Mr Mark Lawson (refer **Attachments 9-21**) and a structural engineers report prepared by Magryn & Associates (refer **Attachments 22-34**), in support of the proposed removal.

### **4. REFERRALS**

#### **4.1 Internal (Advisory) Referrals**

- 3.1.1 Upon receipt of the development application, Council staff sought an additional arboriculture report to confirm the health, life expectancy and risks associated with the tree, along with any possible remedial options that may be available. This report, prepared by Mr Sam Cassar of Symatree Pty Ltd is attached (refer **Attachments 35-46**)
- 3.1.2 Independent advice on the impact of the tree on the nearby dwelling was also sought by Council from Tonkin Consulting (refer **Attachments 47-52**).
- 3.1.3 The report prepared by Mr Cassar and the report of Mr David Nash from Tonkin Consulting are discussed in further detail during the planning assessment of this report.

#### **4.2 External (Legislated) Referrals**

- 4.2.1 No external referral was required.

### **5. PUBLIC NOTIFICATION**

- 5.1 The application is a Category 1 form of development pursuant to Section 38 of the *Development Act 1993* and Schedule 9 of the *Development Regulations 2008* as it involves a tree-damaging activity on private land. No public notification was undertaken.

### **6. PLANNING COMMENTARY**

- 6.1 The proposal constitutes a tree-damaging activity and therefore a development application is required. The proposal is neither a complying nor a non-complying development with reference to Principle of Development Control 13 of the Residential Zone and is therefore to be considered on its merits against the relevant provisions of Council's Development Plan.

- 6.2 Pursuant to Section 35(2) of the *Development Act 1993*, a development that is assessed by the Council as being seriously at variance with the Development Plan must not be granted consent. To this end, the Panel must determine whether the proposal is seriously at variance with the Development Plan prior to making a decision on the application.
- 6.3 The definition of a regulated tree is a tree with a trunk circumference of 2 metres or more, when measured at 1 metre above natural ground level. A significant tree is defined by a tree with a trunk circumference of 3 metres or more, when measured at 1 metre above natural ground level, or any tree declared to be significant within Council's Development Plan. There are tree species that are exempt from being defined as a regulated or significant tree, however the exemptions do not apply to this particular tree.
- 6.4 The subject tree is not listed within Table Pr/4 of Council's Development Plan. The applicant has sought advice from two arborists who have both advised that the tree's circumference measures slightly less than 3m. The independent arborist Council sought advice from advised that the tree circumference measured 3.03m. Authorised officers from Council's planning staff measured the tree in January 2016. At 1m above natural ground level, the tree circumference was 3.18m. It is acknowledged that the tree has substantial roots above ground, thus the natural ground level is not even surrounding the tree. In the circumstances, and in accordance with the definitions within the *Development Regulations 2008*, the subject tree is considered to be a significant tree and will be assessed accordingly.
- 6.5 Should the removal of the subject tree be supported, then the following requirements under Section 42 of the *Development Act 1993* relevant to significant trees must be complied with:
- For every significant tree that is removed, 3 trees must be planted and maintained thereafter.
  - The replacement trees cannot be within 10 metres of an existing dwelling or swimming pool.
  - The replacement trees must not be an exempt species.
  - If replacement trees are not able to be provided, then a payment of \$85.50 per tree must be paid to the Planning and Development Fund.

## **7. PLANNING ASSESSMENT**

### **7.1 Aesthetic and Environmental Benefits**

7.1.1 The provisions of Council's Development Plan anticipate the preservation of significant trees which provide important aesthetic and environmental benefits. It is further anticipated that future development will preserve the attributes of significant trees, especially when the significant tree meets the following criteria (Council-wide PDC 346):

- a) it makes an important contribution to the character or amenity of the local area; or
- b) it is indigenous to the local area and its species is listed under the National Parks and Wildlife Act as a rare or endangered native species; or
- c) it represents an important habitat for native fauna; or
- d) it is part of a wildlife corridor or a remnant area of native vegetation; or
- e) it is important to the maintenance of biodiversity in the local environment; or
- f) it forms a notable visual element to the landscape of the local area.

- 7.1.2 The tree is located almost in the centre of the front yard of the subject land, approximately 4m from the dwelling. Mr Cassar measured the tree in August 2016 and advises that the tree has a circumference of 3.03 metres, is 8.3m in height and has a round shaped canopy with a width of approximately 12.5 metres. Mr Lawson measured the tree in October 2016 and advises that the tree has a circumference of 2.99 metres, is 5m in height and the canopy is approximately 8m wide. Both arborists agree however that the tree is approximately 40 years old.
- 7.1.3 The street trees located on the southern side of Farrant Street within the immediate locality of the subject land are young. Therefore, Mr Cassar advises that given the lack of other trees within the immediate locality, the tree has a strong visual presence within the immediate locality. While Mr Lawson advises that the subject tree is the only large tree on the subject land and cannot be mistaken for any other tree, he is of the view that the tree does not contribute to the character or amenity of the local area, as it cannot be used for shade and it could be causing structural damage to the dwelling.
- 7.1.4 Both Mr Cassar and Mr Lawson advise that the tree is not indigenous to the local area, nor listed under the National Parks and Wildlife Act as a rare or endangered native species.
- 7.1.5 Mr Cassar has advised that the tree is not considered to be an important habitat for native fauna, with no hollows or nesting sites identified within the crown of the tree. Additionally, there is no evidence that the tree is part of a wildlife corridor or part of an area of remnant native vegetation. Mr Lawson agrees, advising that as an introduced native, the tree has a limited habitat value.
- 7.1.6 Mr Cassar and Mr Lawson have both advised that the tree is not a local indigenous native species, and therefore it is not important to the maintenance of biodiversity in the local environment. Within their reports Mr Cassar and Mr Lawson note that the tree does not form a notable visual element to the landscape.
- 7.1.7 Farrant Street has a number of mature trees, both on the road reserve and within the front gardens of the private properties. The street trees located in front of the subject land, and within the immediate locality along the southern side of Farrant Street, are quite young and not well established. Therefore, in its current landscape, the tree is a highly visible element when approaching the subject land.
- 7.1.8 Guidance has been offered in considering these threshold aesthetic contribution tests previously by the ERD Court. To this end, attention is drawn in particular to the following paragraphs of a judgment in the recent matter of *The Anglican Church of Australia Collegiate School of Saint Peter v The Corp of the City of Norwood Payneham & St Peters* [2016] SAERDC 11, which states:
- *the tree makes a positive contribution to the character or amenity of the local area... but, that it did not make an important contribution in that regard; and*
  - *the tree is visible from several areas and vantage points within the College grounds and from parts of Hatswell, Rugby and Pembroke Streets, but it is not a notable element in the landscape of the local area/streets, due to (variably) distance, being within a canopy grouping, and adjacency of other mature trees, whether private or street trees. He opined that it is a “minor element in the background”, and “not an attractive example”. (emphasis added)*

7.1.9 With regard to the subject tree, it does not sufficiently demonstrate environmental contributions, and it is not considered to be a notable element of the landscape. Together with its location, height and crown, the subject tree is however, considered to be a prominent and positive feature on the subject land and along Farrant Street. It is therefore desirable that the significant tree be preserved and tree-damaging activity avoided if possible (Council-wide Objective 41).

## 7.2 Removal Criteria

7.2.1 The removal of a significant tree is supported by the Development Plan however, (Council-wide PDC 349) on the proviso that:

- a) The tree is diseased and its life expectancy is short; or
- b) The tree represents an unacceptable risk to public or private safety; or
- c) The tree is within 20 metres of a residential, tourist accommodation or habitable building and is a bushfire hazard within a Bushfire Prone Area; or
- d) The tree is shown to be causing or threatening to cause substantial damage to a substantial building or structure of value; and
- e) All other reasonable remedial treatments and measures have been determined to be ineffective.

7.2.2 With regard to CW PDC 349 (c), the tree is not within 20 metres of a residential, tourist accommodation or habitable building and is not in a Bushfire Prone Area. With regard to the remainder of the PDC, both arborist have differing views, specifically with if the tree is a risk to the public and private safety and if it is causing damage to the dwelling.

7.2.3 Mr Lawson states that the tree's overall condition is well below average. He advises that there is dead growth within the crown, and the build-up of soil around the base is commonly linked to termites. Mr Cassar agrees that there is a small quantity of dead growth, however states there is no evidence of disease and the tree is in good health. Mr Cassar expects the tree to have a long useful life under the existing environmental and site conditions, and with on-going management and maintenance by a qualified arborist.

7.2.4 Furthermore, in its current form, Mr Cassar advises the tree has good structure with healthy and actively growing branches and no significant defects observed. Therefore Mr Cassar is of the view that the tree presents a low risk to public or private safety, and with ongoing management and maintenance of the tree, the likelihood of branch failure is considered acceptable.

7.2.5 During his inspection Mr Cassar found no evidence that illustrates the tree is causing or threatening to cause substantial damage to a building or structure of value. Mr Cassar advises that there were no visual evidence of cracking or movement to the outer masonry wall or concrete paths.

7.2.6 Mr Lawson has a differing opinion and advises that structural damage has occurred to the dwelling and that there are roots visible around the tree base, with a major root heading towards the dwelling. He is of the view that the tree roots may be causing the damage to the dwelling.

- 7.2.7 Mr Cassar advises that the species is not known to have an aggressive root system. Therefore once a tree has reached maturity, an equilibrium between root activity and surrounding infrastructure is achieved, thus no future damage to surrounding infrastructure is expected. He notes that this does depend on what engineering standards the surrounding infrastructure has been constructed in accordance with.
- 7.2.8 Both arborists noted that the tree is multi-stemmed and Mr Lawson suggests that as a result of this, it is likely that the stems would continue to grow in this formation, causing the base of the stem to split. He suggests that while pruning may prolong the tree's life, it would not stop future branch failures. Mr Lawson advises that the tree's branches are within close proximity to the overhead power lines and pose a risk in the event there is a branch failure. Mr Lawson states that the tree has a high risk for potential failure and together with the damage it is causing to the dwelling, it should be removed (refer **Attachment 18**).
- 7.2.9 Mr Cassar advises that no reasonable remedial treatments and measures have been determined to be ineffective. He advises that maintenance pruning could be implemented to ensure no damage would occur to the dwelling and would reduce the leaf litter within the gutters.
- 7.2.10 Mr Lawson advises that all forms of remedial action designed to retain and manage the tree have been considered and discounted, stating there are no known techniques that could save this tree. No detail on what those actions are have been provided.
- 7.2.11 Mr Cassar advises that the tree is a mature Willow Myrtle and possesses attributes worth of protection. It is in good health and structure, with no significant structural defects that indicate it poses an unacceptable risk. There is no evidence that the tree is causing or threatening to cause substantial damage to a building or structure of value. The tree provides a high level of amenity to the locality and expects the tree will remain an important community asset for some time to come. Mr Cassar suggests significant pruning is required, however he is of the view that the tree does not meet any of the requirements to justify its removal at this time (refer **Attachments 41**).
- 7.2.12 The applicant engaged engineering consultants Magryn and Associates Pty Ltd to undertake an assessment of the damage that has occurred to the dwelling and provide recommendations for possible remedial works. Magryn and Associates' report, dated December 2016 (refer **Attachments 22-34**), outlines that a visual inspection of the dwelling was carried out both internally and externally.
- 7.2.13 No significant cracks were noted internally, however vertical cracks of between 1-2mm wide were noted on the northern external wall, and separation between the timber wall plate and wall was noted on the eastern external wall (refer **Attachments 24-27**). The cracking was considered to be non-structural, yet there may be potential issues to the dwelling in the future.
- 7.2.14 Magryn and Associates report states that the footings under the house are performing adequately, however there has been some movement, mainly under the northern wall, as a result of the shrinking and swelling of the reactive clay soil beneath the building (refer **Attachment 28**).

- 7.2.15 The report notes that it is common for tree roots and inadequate drainage to be the main causes of a variation in the soil moisture content. Magryn and Associates advise that as the site drainage appeared adequate, apart from at the rear of the property, it is most likely the trees at the front and to the side of the dwelling that are the cause of the soil being dry, which is causing the undulation and movement in the footings.
- 7.2.16 Accordingly, they recommend carrying out remedial works such as removing the tree at the front of the property to prevent any further exacerbation of the soil drying, impervious paving around the house be installed, the downpipes be connected to the underground stormwater drainage system and the existing cracks being repaired (refer **Attachments 28-29**).
- 7.2.17 Council sought independent engineering advice from Tonkin Consulting (refer **Attachments 47-52**). An inspection was undertaken in December 2016, both internally and externally. Minimal cracking was found internally, with minor cracks at cornice joins, and to the ceiling in the kitchen and hallway. Externally, minor cracking was noted to the northern wall.
- 7.2.18 Tonkin Consulting outlines that when assessing the current cracks in accordance with the Residential slabs and footings-Construction Australian Standard 2870, the cracks are not considered to be causing substantial damage. Furthermore, it is unlikely that the dwelling would experience substantial cracks as a result of the tree, and therefore the removal of the tree is unwarranted (refer **Attachment 48**).

## **8. CONCLUSION AND RECOMMENDATION**

- 8.1 Council-Wide Principle of Development Control 346 of the Development Plan suggests that it is desirable for a significant tree to be retained if it makes an important contribution to the character or amenity of the area. The *Agonis flexuosa* (Willow Myrtle) is considered to form a positive visual element to the landscape of the local area and as such, makes an important contribution to the amenity of the locality due to its size and visibility.
- 8.2 The tree is in good health and has good structure with no significant structural defects that indicate it poses an immediate unacceptable risk. The tree is expected to offer a long useful life expectancy. It is acknowledged that the level of risk to private and personal safety may increase over time, however this could be addressed via pruning and ongoing tree management.
- 8.3 It has not been adequately demonstrated that the tree warrants removal due to being diseased, having a limited life expectancy, representing an unacceptable risk to public or private safety or causing or threatening to cause substantial damage to a substantial building or structure of value. Furthermore, it has not been adequately demonstrated that all remedial measures have been found ineffective.
- 8.4 The application is therefore considered to be inconsistent with the relevant provisions of the Prospect (City) Development Plan and warrants the refusal of development plan consent.

It is recommended:

That with reference to the relevant provisions of the Prospect (City) Development Plan, the zoning of the land within which the proposed development is situated and the locality within which the land is situated, the Panel resolves that development application 050/256/2016 is not seriously at variance with the Development Plan and as such a decision shall be made on the merits of the application; and

That pursuant to the *Development Act 1993*, as amended, Development Plan Consent be refused to DA 050/256/2016 for Removal of Removal of a Significant Tree – *Agonis flexuosa* (Willow Myrtle) at 59 Farrant Street, Prospect (CT 5934/617), as the proposal would:

- Result in the removal of a significant tree that is worthy of retention, without giving due regard to all reasonable remedial treatments available.

As such, the proposed development would be at variance with the relevant provisions of the Prospect (City) Development Plan and in particular:

- Council Wide Objectives 41; and
- Council Wide Principles of Development Control 346(a), 349.

**Advisory Notes:**

**Your Appeal Rights:** Pursuant to Section 86(1)(a) of the *Development Act 1993*, you have the right of appeal to the Environment, Resources and Development Court against either:

- a) a refusal of consent; or
- b) any condition(s) that have been imposed on a consent.

Any such appeal must be lodged with the Court within two (2) months from the day on which you receive this notification or such longer period as may be allowed by the Court.

The Environment, Resources and Development Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide SA 5000 (Postal Address: GPO Box 2465, Adelaide SA 5001).

**ITEM NO.:** 7.1

**TO:** Development Assessment Panel (DAP) 5 June 2017

**FROM:** Nathan Cunningham, Director Community & Planning

**SUBJECT:** Summary of Development Assessment Commission (DAC) Decisions and Proposals Greater than \$3 Million called in by the Coordinator-General

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The summary of matters before and decisions by DAC together with proposals called in by the Coordinator-General is provided to the DAP for information purposes.

For the purpose of this report, the table below also includes matters before, considered or determined by the Inner Metropolitan Development Assessment Commission.

### 1. MATTERS BEFORE DAC

Development Application / Address	Nature of development	Process update
DA 050/260/2016 82-84 Churchill Road, Prospect	Five Storey Residential Flat Building comprising 51 Dwellings, and associated site works	The application was considered by the DAP on 8 August 2016. The application is currently being considered by DAC.

### 2. RELEVANT DECISIONS BY DAC

Nil

### 3. MATTERS CALLED IN BY THE CO-ORDINATOR GENERAL

No new proposals have been called in by the Co-ordinator General.

**ITEM NO.:** 8.1  
**TO:** Development Assessment Panel (DAP) on 5 June 2017  
**FROM:** Nathan Cunningham, Director Community & Planning  
**SUBJECT:** Summary of Court Appeals

The status of appeals is provided to the DAP for information purposes. Further clarification may be sought from staff during the meeting.

## APPEALS

Development Application / Subject Site	Nature of Development	Decision authority and date	Current status
DA 050/120/2014 13-14 Fitzroy Terrace, Fitzroy	Change of use from Dwelling to Aged Care Facility, and two-storey additions to Aged Care Facility, and Basement Carpark	12/09/2016 By the DAP	Appeal lodged by applicant. <i>Appealing against Refusal.</i> The preliminary conference has been scheduled for 15 June 2017.
050/83/2015 270A Main North Road, Prospect	LED Advertising Display and Mesh Canopy	12/09/2016 By the DAP	Appeal lodged by applicant. <i>Appealing against Refusal.</i> At the request of the applicant the matter has been adjourned, with the preliminary conference now scheduled for 9 October 2017.
050/256/2016 59 Farrant Street, Prospect	Remove Significant Tree (Willow Myrtle)	13/02/2016 By the DAP	Appeal lodged by applicant. <i>Appealing against Refusal.</i> The applicant has provided information for consideration which forms Item 6.3 of this agenda. The conciliation conference has been scheduled for 19 June 2017.
050/336/2016 235 Prospect Road, Prospect	Three Storey Residential Flat Building (comprising 7 dwellings)	10/04/2017 By the DAP	Appeal lodged by applicant. <i>Appealing against Refusal.</i> A compromise proposal is presently being prepared and is anticipated to be presented to the DAP at its meeting on 10 July 2017. The conciliation conference is scheduled for 18 July 2017.