

7. ACORN CLOSE RESERVE – GUM TREE

General Manager responsible:	General Manager City Environment
Officer responsible:	Bruce Penny, Acting Greenspace Unit Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek the Board's decision on a further application from Jill and Neil Clark of 6 Acorn Close for the removal of a protected notable gum tree situated on Council reserve land adjacent to their property. The Board has delegated authority to decide on the removal or retention of trees on reserves, although the implementation of any decision will still require a separate application to be made for resource consent.

EXECUTIVE SUMMARY

2. At its meeting on 5 May 2004 the Board heard an application from Mr and Mrs N and J Clark regarding their request for the Council to remove the large Tasmanian Bluegum in Acorn Close Reserve adjacent to their property. Their reasons for wanting the tree to be removed were that a dead branch had fallen from the tree and penetrated the roof of their four year old dwelling. They were concerned for their personal safety, together with the risk of damage to their property and the safety of others using the Reserve. The Board, having considered a report from the Council's City Arborist in which the safety aspects, remedial tree work and merits of the gum as a major landscape feature of the reserve and locality were discussed, resolved to decline the Clarks' application subject to the recommended remedial safety tree health work being implemented. Pruning to remove all dead branches and reduction of end weight on major limbs was subsequently carried out.
3. In March 2005 following a period of gales, a large, live branch broke off near the top of the gum, one end of the branch falling across the Clarks' boundary fence and into their garden 5.0 metres from their house. This led to the current request from the Clarks for the gum to be removed. As an interim safety precaution, adjacent branches experiencing more wind forces due to the loss of the broken branch have been either removed or reduced in length.
4. As there has been considerable local interest in preserving the gum in the past, Acorn Close residents have been advised of the situation by letter and asked for their opinion as to whether they would prefer the gum tree to be removed or retained, albeit in a much reduced form. From the response to the survey, 50% were agreeable to the gum being removed and 50% against (some being strongly opposed). This report sets out the reasons and considerations for recommending that the tree be retained, although at a much reduced size.

LEGAL AND FINANCIAL CONSIDERATIONS

5. As there are health and safety considerations and property damage risks associated with large trees such as this gum, the Council's solicitor, David Rolls, was asked to provide a legal opinion on the situation. The key points are as follows:
6. In the case of the (gum) tree in Acorn Close Reserve the Council has a duty to take all reasonable steps to ensure that the tree does not continue to damage the property at 6 Acorn Close (the Clark's property) and to prevent actual or potential danger to their life or health. The Council is aware that in the past the tree has posed a danger to 6 Acorn Close by reason of falling branches. In ascertaining what those reasonable steps may be, the Council must obtain and rely on expert advice. If that expert advice is that the danger presented by the tree to 6 Acorn Close (and other neighbouring property) can be mitigated by undertaking remedial measures such as pruning, control of insect infestation and regular safety inspections then by undertaking those measures, the Council will have discharged its duty in terms of the Common Law.
7. Should the Council fail to take such reasonable steps and damage to neighbouring property thereby arises, then the Council may be liable in either nuisance or negligence for any damage thereby resulting.
8. In the event of the Council being found to be liable for any damage that the gum may cause to private property, the Council's public liability insurance will cover the damage, but is subject to an excess amount of \$2,000.

9. The gum is protected as a notable tree under Part 10 and Appendix 4 of the proposed City Plan. The City Plan states that under rules 2.2.3. (a) and (b) the "removal of any tree and pruning at a height greater than one third of the of the total height and also including any branches greater than 50 millimetres diameter below this level, requires resource consent".
10. With regard to the above City Plan rules, in the event of the Board deciding that the gum tree should be removed, or that a major crown reduction be carried out, a separate application would still need to be made by the Council for resource consent. Applications for resource consents involving felling or works on notable protected trees are defined as discretionary activities in the City Plan and will initially involve a decision under the delegated authority of the Council's Resource Management Officer Subcommittee. The Council may decide that the application be publicly notified.
11. The Clarks could apply themselves for resource consent to fell the tree, but the Council as owner of the tree would still be able to object to the tree being removed (if the Board saw fit) as part of the resource consent process.
12. The Clarks could apply directly to the District Court under Section 129c of the Property Law Act for an order for the tree to be removed; should the Court so order, the decision would override the Council's tree protection rules and the gum would have to be removed.
13. The cost of removing the gum has been estimated to be in the region of \$3,500 and the cost of the remedial pruning work about \$1,800.

BACKGROUND ON ACORN CLOSE GUM TREE AND CLARK APPLICATION

14. The gum tree in question is a very large Tasmanian blue gum (*Eucalyptus globulus*) that is listed as a notable protected tree under Part 10 of the proposed City Plan. The gum has been protected since the transitional Christchurch City Plan became operative in 1986.
15. In 1996 the land (then government owned) was subdivided. At the time of subdivision, in the knowledge that creating a residential section under or in close proximity of the gum was going to result in ongoing resident complaints about the tree and requests for it to be removed, the tree was instead included in Council reserve land taken as subdivision reserve contribution. In designing the reserve area, every effort was made to create a reasonably safe distance from the gum to the private property boundary, in that the property boundary was positioned 10.8 metres from the gum and no branches actually overhung the property. However, since the Clarks took possession of the section in 1999/2000 they have made several complaints about the gum relating to shading, tree litter and safety. In response to these complaints the gum was pruned to alleviate these problems. In January 2004 a dead branch fell from the tree during a gale and penetrated the roof and soffit of their house. This led to the Clarks' initial request to the Board for the tree to be removed in May 2004.
16. At its meeting held on 18 May 2004, the Board subsequently resolved to decline the request for the gum to be removed, subject to a second opinion on the condition of the tree being obtained from an independent arborist and the following works (as recommended by the Greenspace Unit) implemented:
 - (a) Removal of all dead branches.
 - (b) Reduction of length and end-weight on major limbs.
 - (c) Tree to be treated with an insecticide to control insect infestation.
 - (d) pruning and health and safety inspections to be scheduled on an annual basis.
17. An independent report on the condition of the gum was obtained from Hendrik Berkhout, the arborist proprietor of Budds Tree and Garden Services who concluded that: "With careful pruning and regular maintenance, there is no reason barring an "act of god" as to why the tree should be removed".
18. The pruning work was subsequently carried out on the tree and a great deal of branch material removed in the process, although care was also taken not to spoil the overall form and attractive character of the gum.

29. The downside of such crown reduction pruning is that although in most cases the branch will survive and generate new shoot growth, the cut ends of the large branches may eventually be affected by decay to some degree. New branches should not be allowed to grow too large in these circumstances as they may be weakly attached. New shoot growth will also mean that