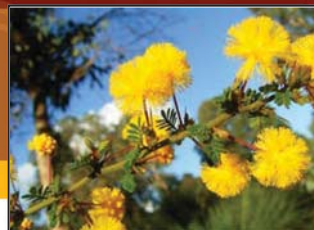


# Ordinary Council Meeting

Minutes for Monday 15 October 2012



**shire of  
kalamunda**

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## MINUTES

### 1.0 OFFICIAL OPENING

1.1 The Chairman opened the meeting at 6.30pm and welcomed Councillors, Staff, Press and Members of the Public Gallery, in particular members of the Zig Zag Venturer Unit of the Gooseberry Hill Scouts and their leader.

### 2.0 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE PREVIOUSLY APPROVED

#### 2.1 Attendance

##### Councillors

Sue Bilich	North Ward
Noreen Townsend	South West Ward
Justin Whitten	South West Ward
Allan Morton	(Acting Chairman) South West Ward
Geoff Stallard	South East Ward
Frank Lindsey	South East Ward
John Giardina	South East Ward
Martyn Cresswell	North West Ward
Dylan O'Connor	North West Ward

##### Members of Staff

Clayton Higham	Acting Chief Executive Officer
Rhonda Hardy	Director Corporate & Community Services
Darrell Forrest	Manager Governance
Sam Assaad	Manager Infrastructure Operations
Andrew Fowler-Tutt	Manager Development Services
Meri Comber	Governance Officer

**Members of the Public** 10

**Members of the Press** 1

#### 2.2 Apologies

##### Councillors

Donald McKechnie	(Chairman) (Shire President) North Ward
Margaret Thomas	North Ward

#### 2.3 Leave of Absence Previously Approved

Bob Emery	North West Ward
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### **3.0 PUBLIC QUESTION TIME**

A period of not less than 15 minutes is provided to allow questions from the gallery on matters relating to the functions of Council. For the purposes of Minuting, these questions and answers are summarised.

#### **3.1 Heather Fitzgerald – Item 10.4.1**

Heather Fitzgerald asked why certain emails addressed to the Shire had not been included in the attachment for item 10.4.1.

The Acting Chief Executive Officer answered that it was felt there was sufficient information supplied with the Report to give a clear picture of the situation.

### **4.0 PETITIONS/DEPUTATIONS**

4.1 Nil.

### **5.0 APPLICATIONS FOR LEAVE OF ABSENCE**

5.1 Nil.

### **6.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

#### **6.1 RESOLVED OCM 128/2012**

That the Minutes of the Ordinary Council Meeting held on Monday 17 September 2012 are confirmed as a true and accurate record of the proceedings.

Moved: **Cr Noreen Townsend**

Seconded: **Cr Geoff Stallard**

Vote: **CARRIED UNANIMOUSLY (9/0)**

#### **6.2 RESOLVED OCM 129/2012**

That the Minutes of the Special Council Meeting held on Thursday 20 September 2012 are confirmed as a true and accurate record of the proceedings.

Moved: **Cr Justin Whitten**

Seconded: **Cr Dylan O'Connor**

Vote: **CARRIED UNANIMOUSLY (9/0)**

## **7.0 ANNOUNCEMENTS BY THE PERSON PRESIDING WITHOUT DISCUSSION**

The Presiding Person announced that there would be a late Confidential Item, relating to the forensic audit and this would be dealt with at Item 14 of this Agenda.

## **8.0 MATTERS FOR WHICH MEETING MAY BE CLOSED**

8.1 **C&C 78. Proposed Renewal of Lease, 38 Collins Road, Kalamunda - Reason for Confidentiality** – *Local Government Act 1995*: Section 5.23 (2)(c) "A contract entered into, or which may be entered into, by the local government which relates to a matter to be discussed at the meeting".

8.2 **CEO Report/Urgent Business Confidential Item – Update on Forensic Audit in Relation to a Matter Affecting an Employee (provided under separate cover)**  
Reason for Confidentiality – *Local Government Act 1995*: Section 5.23(2) (a), "a matter affecting an employee or employees".

## **9.0 DISCLOSURE OF INTERESTS**

### **9.1 Disclosure of Financial and Proximity Interests**

- a. Members must disclose the nature of their interest in matters to be discussed at the meeting. (Sections 5.60B and 5.65 of the *Local Government Act 1995*.)
- b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the *Local Government Act 1995*.)

9.1.1 Nil.

### **9.2 Disclosure of Interest Affecting Impartiality**

- a. Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee had given or will give advice.

9.1.2 Nil.

## **10.0 REPORTS TO COUNCIL**

Please Note: declaration of financial/conflict of interests to be recorded prior to dealing with each item.

**Declaration of financial / conflict of interests to be recorded prior to dealing with each item.**

**10.1 Development & Infrastructure Services Committee Report**

**10.1.1 Adoption of Development & Infrastructure Services Committee Report**

RESOLVED OCM 130/2012

<b>Voting Requirements: Simple Majority</b>
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That the recommendations contained in the Development & Infrastructure Services Committee Report of 2 October 2012 be adopted.

Moved: **Cr John Giardina**

Seconded: **Cr Noreen Townsend**

Vote: **CARRIED UNANIMOUSLY (9/0)**

**10.1.2 D&I 82 Adoption of the Revised Asset Management Policy**

EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Adopts the Revised Asset Management Policy (ENG15), as shown at (Attachment 1).

**10.1.3 D&I 83 MRS Amendment 1235/57 – Lot 32 (31) Brook Road and Lot 36 (655) Welshpool Road East, Wattle Grove**

EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Advises the WA Planning Commission it supports the Metropolitan Region Scheme Amendment 1235/57 to rezone a portion of Lot 32 (31) Brook Road and Lot 36 (655) Welshpool Road East, Wattle Grove, from the Parks and Recreation Reservation under the Metropolitan Region Scheme to Urban.
2. Requests that consideration be given to including the land bounded by Brook Road, Welshpool Road East and the Local Government boundary with the City of Gosnells as part of the future structure planning of the subject lots.

#### 10.1.4 D&I 84 Detailed Area Plan – Lot 6 (19) William Street, Wattle Grove

##### EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Approves the Detailed Area Plan for Lot 6 (19) William Street, Wattle Grove, subject to the following conditions:
  - a) **1. Practical Barrier.**  
The developer is to construct a 1.8m high fence with brick pillars to the satisfaction of the Shire on the western boundary of the property as depicted on this DAP.
2. On receipt of the amended detailed area plan, forwards the Plan to the WA Planning Commission for endorsement.

#### 10.1.5 D&I 85 Outbuilding (Shed) and Rural Industry – Lot 13 (547) Pickering Brook Road, Pickering Brook

##### EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Approves the application dated 25 July 2012 to build a 400sqm outbuilding at Lot 13 (547) Pickering Brook Road, Pickering Brook, subject to the following conditions:
  - a. No storage or carrying out of commercial activities is permitted in open yard areas visible from any adjoining street.
  - b. Colour and material details of the proposed development are to be submitted to and approved by the Shire prior to the building permit being issued.
  - c. No major servicing of machinery is permitted on the property.
  - d. An effluent disposal system that complies with the Health (*Treatment of Sewage and Disposal of Effluent and Liquid Waste*) Regulation 1974 must be installed.
  - e. All car parking being contained on site.
  - f. The crossover shall be suitably constructed to the specifications of the Shire.



**10.1.6 D&I 86 The Parking of One Commercial Vehicle, an Outbuilding (Garage) and Ancillary Accommodation – Lot 7 (35) Courtney Place, Wattle Grove**

EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Approves the application for a 400sqm outbuilding (garage) and a 154sqm ancillary accommodation to be built, and for Yunfeng Yang to park one commercial vehicle, an Isuzu truck (registration number 1CRR 950), at Lot 7 (35) Courtney Place, Wattle Grove, subject to the following conditions:

**Outbuilding and Ancillary Accommodation**

- a. The Ancillary Accommodation shall only be occupied by members of family of the occupiers of the main dwelling.
- b. A notification, under Section 70A of the Transfer of Land Act 1893, shall be placed on the Certificate of Title prior to the issue of a building licence which advises the following:

*“Purchasers of the above described land are notified that the use of the land is subject to a requirement that the Ancillary Accommodation shall only be occupied by members of family of the occupiers of the main dwelling.”*

- c. The colour and material details of the proposed ancillary accommodation and outbuilding blending with existing development on the property to the Shire’s satisfaction.
- d. The external colour and materials details of the ancillary accommodation and outbuilding being submitted to and approved by the Shire prior to the building licence being issued.
- e. The outbuilding not being used for habitation, commercial and/or industrial purposes.
- f. An effluent disposal system being installed that complies with the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulation 1974*.

**Commercial Vehicle**

- g. The vehicle must, at all times, be parked in the location shown on the approved site plan.
- h. The commercial vehicle is only permitted to be operated between 6.30am and 5.00pm Monday to Friday.

- i. Maintenance and cleaning of the commercial vehicle is only permitted between 8.00am and 6.00pm Monday to Saturday, and 9.00am to 6.00pm on Sundays.
  - j. Only maintenance of a minor nature, such as servicing or wheel changing, is to be carried out on the subject property between the hours designated in condition h. No panel beating, external spray painting, external welding or the removal of major body or engine parts is permitted.
  - k. The idling time for the start-up and cool down of the vehicle being a maximum of five minutes per day.
  - l. Washing of the commercial vehicle on the subject lot is to be limited to the use of water and mild detergent, but not involve the use of any solvents, degreasing substances, steam cleaning and any other processes which may cause pollution or degradation of the environment.
2. Advises the applicant that any additional vehicle or commercial vehicle used or intended to be used, for carrying goods or persons for hire or reward, would not be permitted to be parked on the property.

**10.1.7 D&I 87 Lot 56 (7) Gumnut Close, Maida Vale - Application to Keep More Than Two Dogs**

EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Pursuant to Clause 3.2 of the Shire of Kalamunda Dogs Local Law 2010 made under Section 26(3) of the *Dog Act 1976*, grant an exemption to the applicant of 7 Gumnut Close, Maida Vale, to keep three dogs on this property.

**10.1.8 D&I 88 Lot 16 (114) John Farrant Drive, Gooseberry Hill - Application to Keep More Than Two Dogs**

EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Pursuant to Clause 3.2 of the Shire of Kalamunda Dogs Local Law 2010 made under Section 26(3) of the *Dog Act 1976*, grant an exemption to the applicant of 114 John Farrant Drive, Gooseberry Hill, to keep three dogs on this property.

**10.1.9 D&I 89 Lot 219 (37) Armour Way, Lesmurdie - Application to Keep More Than Two Dogs**

EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Pursuant to Clause 3.2 of the Shire of Kalamunda Dogs Local Law 2010 made under Section 26(3) of the *Dog Act 1976*, grant an exemption to the applicant of 37 Armour Way, Lesmurdie, to keep three dogs on this property.

**10.1.10 D&I 90 Lot 170 (42) Thorne Road, Hacketts Gully - Application to Keep More Than Two Dogs**

EN BLOC RESOLUTION OCM 130/2012

That Council:

1. Pursuant to Clause 3.2 of the Shire of Kalamunda Dogs Local Law 2010 made under Section 26(3) of the *Dog Act 1976*, grant an exemption to the applicant of Lot 170 (42) Thorne Road, Hacketts Gully, to keep three dogs on this property.

**10.2 Corporate & Community Services Committee Report**

**10.2.1 Adoption of Corporate & Community Services Committee Report**

RESOLVED OCM 131/2012

<b>Voting Requirements: Simple Majority</b>
---

That the recommendations contained in the Corporate & Community Services Committee Report of 8 October 2012 be adopted.

Moved: **Cr Dylan O'Connor**

Seconded: **Cr Martyn Cresswell**

Vote: **CARRIED UNANIMOUSLY (9/0)**

**10.2.2 C&C 74 Creditors' Accounts Paid During the Period 29 August to 26 September 2012**

EN BLOC RESOLUTION OCM 131/2012

That Council:

1. Receives the list of creditors paid during the period 29 August to 26 September 2012 (Attachment 1) in accordance with the requirements of the *Local Government (Financial Management) Regulations 1996 (Regulation 12)*.

**10.2.3 C&C 75 Debtors and Creditors Reports for the Period Ended 31 August 2012**

EN BLOC RESOLUTION OCM 131/2012

That Council:

1. Receives the outstanding debtors (Attachment 1) and creditors (Attachment 2) reports for the period ended 31 August 2012.

**10.2.4 C&C 76 Rates Debtors Report for the Period Ending 31 August 2012**

EN BLOC RESOLUTION OCM 131/2012

That Council:

1. Receives the rates debtors report for the period ended 31 August 2012 (Attachment 1).

**10.2.5 C&C 77 Disposal of Four Surplus Motor Vehicles**

EN BLOC RESOLUTION OCM 131/2012

That Council:

1. In accordance with Section 3.58 of the *Local Government Act 1995*, authorises the disposal of the following vehicles by public auction:
  - KM 38331 Plant Number P0209
  - 1DXT 124 (old KM 32) Plant number P0207
  - KM 38049 Pant number P0332
  - KM 13520 Plant Number PO369
2. Requests the Chief Executive officer to set the method of establishing the Reserve Price by obtaining three valuations and then averaging the highest two valuations received.
3. Authorises the sale price to be no less than 90% of the Reserve Price that was set prior to auction.

### **10.2.6 C&C 78 Confidential Item – Proposed Renewal of Lease, 38 Collins Road, Kalamunda**

Reason for Confidentiality: Local Government Act 1995 S5.23(2)(c) – “ a contract entered into, or which may be entered into, by the local government which relates to a matter to be discussed at the meeting.”

#### EN BLOC RESOLUTION OCM 131/2012

That Council:

1. Agrees to defer the renewal of the lease between the Shire of Kalamunda and owners of Kalajos and Fit 2 Cheer until further discussion with the owners has taken place to explore alternative arrangements for the businesses.

### **10.3 Audit Committee Report**

#### **10.3.1 Adoption of Audit Committee Report**

#### RESOLVED OCM 132/2012

<b>Voting Requirements: Simple Majority</b>
---

That the recommendations contained in the Audit Committee Report of 17 September 2012 be adopted.

Moved: **Cr Dylan O'Connor**

Seconded: **Cr Justin Whitten**

Vote: **CARRIED UNANIMOUSLY (9/0)**

#### **10.3.2 AU 05 Interim Audit Findings For Financial Year 2011-2012**

#### EN BLOC RESOLUTION OCM 132/2012

That Council:

1. Notes the Interim Audit Findings for the 2011-2012 Financial Year.
2. Requests the Chief Executive Officer address any issues identified in the Auditor's Interim Audit Report for the year ended 30 June 2012.

**10.3.3 AU 06 Progress on the Implementation of Recommendations of the Forensic Audit on the Kalamunda Water Park**

EN BLOC RESOLUTION OCM 132/2012

That Council:

1. Notes the implementation by the Shire of key findings and recommendations of the Report on the Kalamunda Water Park Project prepared by the Forensic Auditors.

**10.3.4 AU 07 Implementation of the Recommendations of the Forensic Audit on the Kalamunda Water Park- Purchasing and Tendering**

EN BLOC RESOLUTION OCM 132/2012

That Council:

1. Adopts the Revised Purchasing Policy (PUR- 1) as per (Attachment 1).
2. Receives and notes the Implementation of the Forensic Audit recommendations by including the required processes and procedures in Tender and Purchasing Guidelines (Attachments 2 and 3).

**10.3.5 AU 08 Sundry Debtor Write-Off**

EN BLOC RESOLUTION OCM 132/2012

That Council:

1. Endorses the write off of sundry debts totalling \$14,451.66 as detailed in (Attachment 1) in the financial year 2011/12.

## 10.4 CHIEF EXECUTIVE OFFICER REPORTS

Declaration of financial / conflict of interests to be recorded prior to dealing with each item.

### 10.4.1 Consideration of Objection to Notice to Remove Tree – 77 Falls Road

Previous Items	N/A
Responsible Officer	Director Development & Infrastructure
Service Area	Infrastructure Operations
File Reference	77 Falls Road
Applicant	N/A
Owner	MK & KLPayne
Attachment 1	Arborist Report 2011 (on behalf of 81 Falls Road)
Attachment 2	Notice to remove tree (21 December 2011)
Attachment 3	Request for Arborist report
Attachment 4	Letter of Dispute to Notice
Attachment 5	Arbour report 2012 (on behalf of the Shire)
Attachment 6	Letter to new owners of 77 Falls Road advising withdrawal of Notice.
Attachment 7	PiCUS test results received (on behalf of the Shire)
Attachment 8	Notice to remove tree (10 July 2012)
Attachment 9	Objection to new notice
Attachment 10	Letter offering 1/3 <sup>rd</sup> payment for removal

#### PURPOSE

1. For Council to consider an objection to the notice for the removal of a tree on 77 Falls Road, Lesmurdie.

#### BACKGROUND

2. In late 2011, the Shire received a complaint from the resident at 81 Falls Road, regarding the potential risk from a tree within the property of 77 Falls Road, Lesmurdie. The resident provided an arborist report that stated the tree was considered unsafe and recommended that the tree be removed. The report was based on a visual inspection undertaken from the neighbouring property. A copy of the initial arborist report is provided in (Attachment 1).
3. After consideration of the report, the Shire issued a notice to the owners of 77 Falls Road to make the tree safe "by removing it or other appropriate means". This notice was issued on 21 December 2011 (Attachment 2).
4. Late in December 2011, the private arborist report was provided to the owners of 77 Falls Road, and in early January an objection was received regarding the notice (Attachment 3 and Attachment 4).
5. In January 2012, the Shire obtained an independent arborist report, which recommended the tree be retained but that remedial works be undertaken to remove dead wood from the canopy (Attachment 5).

6. In February/March 2012, 77 Falls Road was sold and from correspondence it appears the new owners were made aware of this matter. On 1 February 2012, a zoning certificate was issued relating to the sale of the land, however the certificate did not identify that there was an order relating to the removal of the subject tree.
7. On 15 March 2012, as an outcome of the result of the recommendation of the arborist report obtained by the Shire the notice issued on 21 December 2011 was withdrawn with a copy sent to the owners at 81 Falls Road (Attachment 6).

## DETAILS

8. Following further conversations with the owner at 81 Falls Road, the Shire made a commitment that further structural assessments of the tree would be undertaken using PiCUS tests. A PiCUS test is conducted using sonar to measure the density of the tree trunk. The test is normally conducted at three different heights on the trunk (ground level, hip height and shoulder height). This test was undertaken in early June 2012, with the results received on 17 June 2012 (Attachment 7).
9. On 10 July, a new order to remove the tree was issued on the basis of the PiCUS test which indicated that there were concerns with the structural integrity of the tree, which could cause failure as the tree increased in size (Attachment 8). The report concluded that the tree should be removed in the short term (0-2 years).
10. An objection to the new notice was received on 13 August 2012 (Attachment 9).
11. On 29 August 2012, the Shire wrote in response to the objection that the order would not be rescinded, however the Shire would agree to contribute one third of the cost of the tree removal (Attachment 10). The owner of 77 Falls Road prevented Shire contractors from accessing the site for the purposes of obtaining a quote.
12. On Friday 5 October, the owner of 77 Falls Road called, allowed Shire contractors access to the site to obtain the quotation, the quotation has now been received.

## STATUTORY AND LEGAL IMPLICATIONS

13. In dealing with an objection, *Section 9.6 of the Local Government Act 1995* requires a decision of Council.

## POLICY IMPLICATIONS

14. Nil.



## **PUBLIC CONSULTATION/COMMUNICATION**

15. Nil, other than what has been provided to the owners at 77 and 81 Falls Road.

## **FINANCIAL IMPLICATIONS**

16. If the Shire undertakes tree removal, the cost is \$6,500.
17. If the Shire undertakes canopy pruning, the cost would be \$2,000 - \$3,000 depending on the quantity of dead wood found.

## **STRATEGIC AND SUSTAINABILITY IMPLICATIONS**

### **Strategic Planning Implications**

18. Nil.

### **Sustainability Implications**

#### Social Implications

19. Nil

#### Economic Implications

20. Nil.

#### Environmental Implications

21. Nil.

## **OFFICER COMMENT**

22. The Shire has a responsibility deal with issues of health, safety or public order within the Shire boundaries. The Shire, however, does not have any obligation to solve issues between adjacent properties.
23. The circumstances surrounding the issuing of the zoning certificate on 1 February 2012 indicate that insufficient information was provided to the current property owner prior to the settlement on the property to satisfactorily negotiate with the previous owner regarding the resolution of the notice that was in place
24. Whilst a precedent could be set if the Shire agrees to undertake work on private property in circumstances where there is no public interest, in the current circumstances it is considered that the Shire should cover the cost of removing the tree.

**Voting Requirements: Simple Majority**

RECOMMENDATION

That Council:

1. Pursuant to *Section 9.6 (4) (a) of the Local Government Act 1995*, dismisses the objection lodged by the owner of 77 Falls Road Lesmurdie and that the tree must be removed as required by the notice issued on 10 July 2012.
2. Recognises that in the circumstances, the cost for the removal of the tree, will be borne by the Shire and the works will be undertaken utilising the Shire's tendered contractor.

Moved: **Cr John Giardina**

Seconded: **Cr Justin Whitten**

*Councillors requested clarification concerning the report, Cr Bilich Foreshadowed a Motion to include a time limit of 28 days, the Mover and Seconder accepted this amendment.*

**Voting Requirements: Simple Majority**

RESOLVED OCM 133/2012

That Council:

1. Pursuant to *Section 9.6 (4) (a) of the Local Government Act 1995*, dismisses the objection lodged by the owner of 77 Falls Road Lesmurdie and that the tree must be removed as required by the notice issued on 10 July 2012.
2. Recognises that in the circumstances, the cost for the removal of the tree, will be borne by the Shire and the works will be undertaken **within 28 days** utilising the Shire's tendered contractor.

Moved: **Cr John Giardina**

Seconded: **Cr Justin Whitten**

Vote: **For**  
**Cr John Giardina**  
**Cr Frank Lindsey**  
**Cr Geoff Stallard**  
**Cr Noreen Townsend**  
**Cr Justin Whitten**  
**Cr Dylan O'Connor**  
**Cr Sue Bilich**  
**Cr Allan Morton**

**Against**  
**Cr Martyn Cresswell**

**CARRIED 8/1**

## Attachment 1

**Bowden Tree Consultancy**

P.O. Box 499  
SCARBOROUGH W.A. 6922

ABN: 51925884945  
email: [info@bowdentree.com.au](mailto:info@bowdentree.com.au)  
Phone: 0438 936679

8<sup>th</sup> December 2011

Heather Fitzgerald  
81 Falls Road  
LESMURDIE W.A. 6076

**ARBORICULTURAL ASSESSMENT AT 81 FALLS ROAD LESMURDIE**

Dear Mrs Fitzgerald,

Please find enclosed the results of the arboricultural assessment undertaken recently for the southern blue gum tree (*Eucalyptus bicostata*) located within the neighbouring property at 79 Falls Road, Lesmurdie.

Where recommendations for arboricultural work have been made, it is imperative that it is undertaken as per the Australian Standard 4373-2007: Pruning of Amenity Trees. It is also strongly advised that any arboricultural works be undertaken or supervised by a qualified arborist (AQF Level 3 in Arboriculture).

If you have any questions regarding the assessment or if I can be of service to you again in the future, please feel free to contact me.

Yours sincerely,



Brad Bowden  
Principal  
Bowden Tree Consultancy

Dip. Arb. (Univ. Melb.)  
ISA Certified Arborist AU-0026A

## **1.0 Executive Summary**

### **1.1 Scope of Report**

- 1.2 The purpose of this report is to provide an arboricultural assessment of the tree health and structural condition with ensuing recommendations for the southern blue gum tree (*Eucalyptus bicostata*) located within the neighbouring property (house number 79) adjacent to 81 Falls Road, Lesmurdie. The site visit and optical assessment was undertaken from ground level on the 28<sup>th</sup> November 2011 and from the property at 81 Falls Road, Lesmurdie only. No soil excavation or below ground inspection was undertaken unless specified. Viewing conditions were fine.

### **1.3 Assessment Synopsis**

- 1.4 Whilst the tree identified within this report contributes to the environmental value of the surrounding area, identification of termite infestation at the crown break and significant lean west towards the residential property at 81 Falls Road, Lesmurdie results in the determination of a high risk of harm. The long ribbony bark, typical for this species that has been shed and is subsequently lodged within branch forks throughout the crown of the tree, as well as a number of large diameter seasoned dead branches augments the likelihood of catastrophic ignition during periods of high fire danger and wildfire threat. It is recommended to remove this tree to ground level, grind the stump and replace with a small maturing ornamental fire retardant tree species.

## **2.0 Introduction**

### **2.1 Trees and People**

2.2 Trees confer numerous benefits, being essential to our well-being and generally enhancing our urban environments. The use of 'safe' or 'unsafe' when assessing trees is both imprecise and ambiguous, as a tree cannot be free from defects or potential hazards - such a state is simply unattainable. Trees can be managed, but they cannot be controlled. To live or work near a tree involves a degree of risk, therefore it is essential to maintain a balance between the tree benefits to society and the costs of risk mitigation.

### **2.3 Raised Concerns**

2.4 Concern has been raised by the residents at 81 Falls Road Lesmurdie regarding the risk of harm from the abovementioned tree overhanging the house and carport, and the potential for ignition during periods of high fire danger and wildfire threat.

### **2.5 Aerial Photo**



### 3.0 Site Investigation

#### 3.1 Assessed Tree

- 3.2 The mature southern blue gum tree (*Eucalyptus bicostata*) had an electronic clinometer height reading of 27.2m recorded. Crown spread was measured at approximately 15m north-south and estimated at 15m east-west. A trunk diameter at breast height of 800mm was estimated. Potential targets within the dripline of the tree included the residential dwelling and carport as well as pedestrian traffic. Occupancy of the potential targets is described respectively as constant and frequent. The most significant part with potential to fail is the first order structural branch with significant lean west towards the property at 81 Falls Road, Lesmurdie. Lateral branch encroachment west beyond the property line was -9m.



Figure 1. A visual tree assessment was undertaken to determine the current tree health and structural condition with ensuing recommendations for the southern blue gum tree (*Eucalyptus bicostata*) that is located within the neighbouring property adjacent to 81 Falls Road, Lesmurdie; (a) looking south from the road and (b) looking south from driveway.

#### 3.3 Root Crown Inspection

- 3.4 Adequate formation of the first order structural roots at the root crown on the tensile side (opposite the direction of lean) of the tree could not be determined as inspection occurred only from the property at 81 Falls Road, Lesmurdie. Excavation for driveway construction on the east side of the tree has previously occurred, and whilst some root plate disturbance is probable, further investigation would be required to determine extent of any root damage and loss. No pathogenic fungal sporophores, deleterious fill soil or ground heave was visible on the west side of the tree. The tree was located 1.8m from the property line wire fence to the west. The ground surface within the dripline of the tree consisted predominantly of concrete surfacing and garden bed.



Figure 2. (a) A branch stub resulting from previous indiscriminate lopping (see arrow) was visible at 1.5m on the south side of the tree; (b) A mud gallery encasing probable active termite infestation was evident (see arrow) on the tensile side of the attachment of the first order structural branch at the crown break approximately 2m above ground level; looking towards the north-east.

### 3.5 Trunk Inspection

- 3.6 Trunk lean was approximately 5° from vertical and west towards the property at 81 Falls Road, Lesmurdie. The trunk forked at ~2m above ground level to form two main first order structural branches, with both possessing a lean orientation west due to competition for growing space and sunlight (phototropism) from the adjacent eucalypt tree to the east. Whilst no significant radial cracking or cavity openings were evident on the lower trunk section, a mud gallery at approximately 2m above ground level encasing probable active termite infestation was evident on the tensile side of the attachment of the first order structural branch extending west. A branch stub of ~150mm in diameter resulting from previous indiscriminate lopping was visible at 1.5m above ground level on the south side of the tree. Sounding with a nylon hammer at the lower trunk section could not be undertaken to determine any hollow reverberations that are indicative of thin residual trunk walls and symptomatic of internal wood degradation. Woundwood development was average were previous pruning had been made at the branch collar.

### 3.7 Crown Inspection

- 3.8 Co-dominant crown form was evident and the shape of the tree was that of minor asymmetry. Vitality for this tree was high with excellent shoot extension visible. Whilst the crown structure was well-formed i.e. no structurally-compromised included bark defects it was suppressed on the east side due to competition for growing space from the adjacent eucalypt tree. Significant branch extension (lever arm) was observable with several first order branches overhanging the carport and residential dwelling, subsequently increasing exposure to wind loading and augmenting the failure potential of the branch.
- 3.9 A number of seasoned dead branches, predominantly third order and ~120mm in diameter were observable sporadically throughout the crown of the tree. Foliage size, colour and density were normal. No significant foliar insect infestation or disease infection symptoms were observed on sample leaves from the lower crown.



**Figure 3.** A number of large seasoned dead branches as well as ribbony bark lodged within branch forks were visible throughout the crown of the tree, augmenting the likelihood of ignition during periods of high fire danger and wildfire threat; looking towards the south.



#### **4.0 Recommendations**

##### **4.1 Assessed Tree**

- 4.2 Remove to ground level, grind the stump and replace with a small maturing ornamental fire retardant tree species

## **5.0 Appendix I**

### **5.1 Author Formal Qualifications**

- 5.2 Bachelor of Science (Sustainable Forestry) – current studies  
Edith Cowan University, Joondalup & Murdoch University, Murdoch
- 5.3 Certificate IV Assessment & Workplace Training – 2005  
Investigation Training Australia, Perth, W.A.
- 5.4 Diploma of Applied Science (Horticulture) – 2000  
Major studies Arboriculture and Parks/ Gardens management  
University of Melbourne, Richmond, Burnley campus
- 5.5 Certificate of Horticultural Practice – 1994  
Challenger TAFE, Perth, Murdoch campus

### **5.6 Practical and Professional Experience**

- 5.7 Consulting Arboriculturist: 2000 to present  
Bowden Tree Consultancy<sup>®</sup>, Scarborough, W.A.
  - 5.8 Director & Senior Lecturer: 2009 to present  
Tree Management Institute<sup>®</sup>, Balcatta, W.A.
  - 5.9 Arboriculturist: 2007 - 2009  
City of Belmont, Cloverdale, W.A.
  - 5.10 Vice-President of the Tree Guild of W.A. Inc.: 2007 - 2009  
Perth, W.A.
  - 5.11 Arboriculture Lecturer: 2005 - 2008  
Challenger TAFE, Murdoch, W.A.
  - 5.12 Climbing Arborist: 1996 to 2010  
Self-employed, Australia wide.
  - 5.13 Assistant Manager Tree Surgery Companies (2): 2003 - 2005  
Southern Professional Tree Service<sup>®</sup>, Bridgetown W.A.  
Classic Tree Services<sup>®</sup>, Balcatta, W.A.
- ### **5.14 Continuing Professional Development**
- 5.15 Healthy Forests Symposium  
Centre of Excellence for Climate Change, Woodland and Forest Health  
Perth, W.A.  
October/ 2011

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Arboricultural Assessment at 81 Falls Road Lesmurdie for Heather Fitzgerald

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- 5.16 Development of Decay in the Sapwood of Trees workshop, Methods and Devices for Tree Risk Assessment workshop, & the International Society of Arboriculture Annual Conference  
Sydney, N.S.W.  
July/ 2011
- 5.17 Growing Trees with Less Water – TMI seminar (keynote speakers - Stephen Livesley, Greg Moore, Peter May)  
Perth, W.A.  
March/ 2011
- 5.18 Tree Pathology, Fungi and Wood Decay Interactions workshop (Francis Schwarze) – Innovation in Urban Ecological Management Conference  
Brisbane, Qld.  
March/ 2011
- 5.19 Tree Root Systems, Tree Valuation and Implementing Tree Protection Zones – TMI seminar (keynote speakers - Greg Moore, Paul Barber, Ian Shears)  
Perth, W.A.  
June/ 2010
- 5.20 Dynamic Wind Loading in Trees workshop & the International Society of Arboriculture Australia Chapter (ISAAC) Annual Conference  
Adelaide, S.A.  
May/ 2010
- 5.21 Trees and Development – TMI seminar (keynote speaker - David Evans)  
Kings Park, West Perth, W.A.  
March/ 2010
- 5.22 Native Tree Decline workshops  
Green Skills Inc.  
Murdoch University, Murdoch, W.A.  
August/ 2009
- 5.23 Picus Sonic Tomography Technician Training  
Enspec Pty Ltd  
Perth, W.A.  
May/ 2009
- 5.24 Identifying Eucalypts and Sustainable Tree Management workshops & the International Society of Arboriculture Australia Chapter (ISAAC) Annual Conference  
Newcastle, N.S.W.  
May/ 2009
- 5.25 ISA Certified Arborist exam  
International Society of Arboriculture (ISA)  
Newcastle, N.S.W.  
May/ 2009

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Arboricultural Assessment at 81 Falls Road Lesmurdie for Heather Fitzgerald

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- 5.26 A Practitioners Guide to Visual Tree Assessment workshop  
David Evans/ Quantified Tree Risk Assessment™ UK  
Perth, W.A.  
March/ 2009
- 5.27 Conflict Resolution workshop  
Australian Institute of Management  
Perth, W.A.  
February/ 2009
- 5.28 Fungal Decay Strategies and International Tree Failure Database workshops & the  
International Society of Arboriculture Australia (ISAAC) Annual Conference  
Brisbane, Qld  
May/ 2008
- 5.29 Quantified Tree Risk Assessment (QTRA) update workshop  
David Evans/ Quantified Tree Risk Assessment™ UK  
Perth, W.A.  
March/ 2008
- 5.30 Quantified Tree Risk Assessment (QTRA) seminar  
Michael Evans & David Evans/ Quantified Tree Risk Assessment™ UK  
Perth, W.A.  
November/ 2006
- 5.31 Woodland Decline Symposium  
Department of Environment & Conservation  
Mandurah, W.A.  
November/ 2006
- 5.32 International Society of Arboriculture Australia Chapter (ISAAC) Annual Conference  
Geelong, Vic.  
October/ 2006
- 5.33 Tree Assessment & Managing Trees on Development Sites, & the Art of Writing  
Professional Reports workshops  
Jeremy Barrell/ Barrell Tree Consultancy UK  
Melbourne, Vic.  
May/ 2006
- 5.34 Arboriculture Law and Report Writing workshops  
International Society of Arboriculture Australia Chapter (ISAAC) Annual Conference  
Launceston, TAS  
October/ 2005
- 5.35 International Society of Arboriculture Australia Chapter (ISAAC) Annual Conference  
Sydney, N.S.W.  
October/ 2004
- 5.36 ISA Certified Arborist exam  
International Society of Arboriculture (ISA)  
Perth, W.A.  
April/ 2004

## **6.0 Appendix II**

### **6.1 Arboricultural Terminology**

- 6.2 Crown – the leaves and branches of a tree measured from the lowest branch on the trunk to the top of the tree.
- 6.3 Crown lift – pruning to remove the lower branches of the crown, generally to improve clearance within the dripline whilst maintaining the natural shape of the tree as much as possible.
- 6.4 Crown thin – pruning to remove rubbing and crossing branches and open the crown of the tree, without modifying the size of the tree.
- 6.5 DBH - diameter of the main trunk, measured at breast height approximately 1.3m above ground level for urban trees.
- 6.6 Deadwooding – the removal of dead, diseased or damaged branch wood from the crown of the tree.
- 6.7 Dripline – the width of the crown of the tree, measured by the lateral extent of the foliage.
- 6.8 First order structural branch – the large branches arising from the trunk that form the main structure of the crown.
- 6.9 Included bark defect – ingrown bark from adjacent parts of the tree that are in contact with each other; usually forks, acutely angled branches or basal stems – often a high failure potential.
- 6.10 Reduction prune – pruning to reduce the extension of a branch, back to a lateral branch that is at least one-third the diameter of the branch being removed.
- 6.11 Root crown – area at the base of the tree where the roots and trunk merge.
- 6.12 Second order branch – a branch arising from a first order structural branch.
- 6.13 Structural root zone (SRZ) – the zone of the root plate most likely to contain roots that are critical for anchorage and the stability of the tree; generally trunk diameter x 5.
- 6.14 Targets – an object, person or structure that would be damaged or injured in the event of tree or branch failure is referred to as the target or target area. The hazard evaluation of the target area is relative to the expected use and occupancy of that area.
- 6.15 Topping and Lopping – deleterious tree and branch reduction work often at indiscriminate points and resulting in weakly-attached regrowth and/ or tree mortality.
- 6.16 Tree Protection Zone (TPZ) – the zone of the root plate most likely to contain roots that are critical for anchorage as well as the absorbing roots responsible for the uptake of water and essential plant nutrients; generally determined as trunk diameter x 12.

## 7.0 Appendix III

### 7.1 Southern Blue Gum Tree Failure at City of Belmont Civic Centre April 2011



Figure 4. Failure of a first order structural branch of ~650mm in diameter occurred from a southern blue gum tree (*Eucalyptus bicostata*) at the City of Belmont civic centre, Cloverdale earlier this year (April, 2011), and as a result of the reduction in the load-carrying capacity due to internal degradation of wood tissue by termites.



Figure 5. (a) Extensive internal degradation was evident within the trunk section of the abovementioned southern blue gum tree in Cloverdale; (b) Signs of termite infestation were visible as external mud galleries (see arrow) that encased active degradation.

## Attachment 2

ULT - 45297



Our Ref: FL-02/77

J S & M A Myers  
77 Falls Road  
Lesmurdie, WA 6076



21 December 2011

Dear Mr & Mrs Myers

### **Section 3.25 Notice Requiring Work to be done at 77 Falls Road, Lesmurdie**

It has been brought to the attention of the Shire that a South Blue Gum located 1.8 metres from your fence line is at high risk of causing harm to your adjoining neighbour. Please see attached plan showing the location of the tree.

The Shire has received an arboriculture assessment of the tree. The report identified termite infestation at the crown break and significant lean west towards the neighbouring property resulting in them determining the tree to be at a high risk of causing harm. They have recommended that the tree be removed to ground level, grind the stump and replace with a small maturing ornamental fire retardant tree species.

The Shire has an obligation to ensure reports of anything dangerous or that can cause harm to persons or things is appropriately dealt with. Therefore due to the severity of this issue, you as the landowners have been given the attached Notice under Section 3.25 of the Local Government Act 1995.

The Notice requires that you ensure the tree is made safe by removing it or other appropriate means to prevent the tree endangering the safety of persons and things on the adjoining land.

It would be appreciated if you would give this your immediate attention.

If you wish to discuss the matter further, please contact Shire's Engineering Personal Assistant Sarah Griffiths on 9257 9946.

Yours sincerely

Rhonda Hardy  
**Director Corporate and Community Services**

**Shire of Kalamunda**  
2 Railway Road, Kalamunda WA 6076  
PO Box 42, Kalamunda WA 6926  
T: (08) 9257 9999 F: (08) 9293 2715  
E: kala.shire@kalamunda.wa.gov.au  
[www.kalamunda.wa.gov.au](http://www.kalamunda.wa.gov.au)



**Local Government Act 1995  
Section 3.25  
Schedule 3.1 Division 1**



To : J S & M A Myers  
77 Falls Road  
Lesmurdie WA 6076

**WHEARES**

- A You are registered as the proprietors of an estate in fee simple in the land described in **Item 1** of the Schedule (land).
- B The Land is within the district of the Shire of Kalamunda (Shire).
- C Under the Local Government Act 1995 (the Act) Schedule 3.1, Division 1, Clause 9 as described in **Item 2** of the Schedule (Provision in the Act). A notice may be served requesting the owners or occupiers of the land to take specific measures.

The Shire is of the opinion that the Southern Blue Gum (*Eucalyptus bicostata*) located approximately 1.8 meters from the property fence line to the west is endangering the person/s and thing/s on the adjoining land.

- D The Shire requires you to undertake the works identified in **Item 3** of the Schedule (Required Works).

**TAKE NOTICE THEREFORE THAT**

- 1. You are hereby required to undertake the Required Works within 42 days from the date of this notice.
- 2. You may object to the Council of the Shire pursuant to the provisions of section 9.5 or apply for a review of this Notice to the State Administrative Tribunal pursuant to the provisions of section 9.7 of the Act.

Your attention is drawn to the times within which any such objection or application or review must be lodged, as set out in Part 9.7(3) of the Act and State Administrative Tribunal Rules 2004.

- 3. If you fail to comply with this Notice then you commit an offence and upon conviction you would be liable to a penalty not exceeding \$5,000.00 and a further penalty not exceeding \$500.00 for each day during which the offence continues.

**Shire of Kalamunda**  
2 Railway Road, Kalamunda WA 6076  
PO Box 42, Kalamunda WA 6926  
T: (08) 9257 9999 F: (08) 9293 2715  
E: kala.shire@kalamunda.wa.gov.au  
[www.kalamunda.wa.gov.au](http://www.kalamunda.wa.gov.au)



4. If you fail to comply with this Notice the Shire may do anything It considers necessary to achieve, as far as is practical for the purpose for which this Notice was given.
5. The Shire may recover the cost of anything it does under the preceding subsection as a debt due from you.

Dated this 21<sup>st</sup> Day of December 20 11



Director of Corporate and Community Services  
Shire of Kalamunda

#### **SCHEDULE**

##### **Item 1 The Land**

Lot 7 on Diagram 8600 being the whole of the land comprised in Certificate of Title Volume 185 Folio 132A. Property also known as 77 Falls Road, Lesmurdie WA 6076

##### **Item 2 Provision in the Act**

Section 3.25, Schedule 3.1, Division 1

9. Ensure that a tree on the land that endangers any person or thing on adjoining land is made safe.

##### **Item 3 The Required Works**

Ensure that the tree is made safe, to the satisfaction of the shire, by removing it or other appropriate means to prevent the tree endangering the safety of person/s and thing/s on the adjoining land.

## Attachment 3



Enquiries: Brett Byfield – 9257 9917  
Our Ref: IM-FOI-002  
Your Ref:

23<sup>rd</sup> December 2011

Ms Maggie Myers  
77 Falls Road  
Lesmurdie WA 6076



Dear Ms Myers

### **Freedom of Information Request – 77 Falls Road – Arborcultural Report – Final Response**

Thank you for your Freedom of Information Request dated the 23<sup>rd</sup> December 2011, in which you requested a copy of the Arborcultural Report. One document was found that matched your request. The document has third party information, including the complainant's name, address and contact details plus the details of the Arborculturalist. Third Party Information is exempt under the Freedom of Information Act 1992, Schedule 1, 3(1). The document is released in edited form, as all third party information has been removed as per Section 24 of the Freedom of Information Act 1992. This section allows for the release of a copy of a document, once exempt matter has been deleted (in this case, all third party information).

If you wish to appeal this decision, an application for internal review must be lodged with this agency within 30 days of written notice being given. The internal review must be in writing, and provide details of the decision to be reviewed. There is no lodgement fee for an application for internal review and there are no charges for dealing with an internal review request. If an application for an internal review is received, it will not be dealt with by the person who made the initial decision, or by the person who is subordinate to the original decision maker. If you have any queries, please contact Brett Byfield on 92579917.

Yours Sincerely

Rhonda Hardy  
**Freedom of Information Co-ordinator**

**Shire of Kalamunda**  
2 Railway Road, Kalamunda WA 6076  
PO Box 42, Kalamunda WA 6926  
T: (08) 9257 9999 F: (08) 9293 2715  
E: kala.shire@kalamunda.wa.gov.au  
[www.kalamunda.wa.gov.au](http://www.kalamunda.wa.gov.au)

## Attachment 4

77 Falls Road, Lesmurdie, WA 6076

Mr James Trail  
CEO, Shire of Kalamunda,  
2 Railway Road,  
Kalamunda, WA 6076

2 January 2012

Dear James Trail

**Re: Shire's procedure regarding complaints  
with reference to Section 3.25 Notice Requiring Work to be done  
at 77 Falls Road, Lesmurdie**

We have received a letter from Rhonda Hardy, Shire of Kalamunda, dated 21 December 2011 (ref. FL-02/77) stating that we have a dangerous tree and that we should remove it or make it safe under Local Government Act 1995, Section 3.25, Schedule 3.1, Division 1. This appears to be in response to an allegation from neighbours at 81 Falls Road.

We understand from the Shire of Kalamunda leaflet (Building Information Sheet 11) about trees that overhang neighbours property that "if you have a problem with overhanging branches ... talk to your neighbour and try to resolve the complaint first". The leaflet further states that if neighbours cannot reach an agreement there are mediation services available to help them reach agreement. The letter from the Shire of Kalamunda dated 21 December 2011 appears to be a last resort, of the kind that could follow complete failure of any negotiations between neighbours. However discussion and negotiation between the neighbours at 81 and 77 Falls Road has barely begun.

Our neighbours at 81 Falls Road first raised this issue in a letter dated 29 November 2011 (copied below, item 2) and asked for a reply within 21 days. They sent their letter by registered post which seemed a bit strange as they could more easily have delivered the letter by hand and thereby met to discuss their concern directly. We duly replied in a letter dated 17 December 2011 (copied below, item 3) and, following their procedure, sent this by registered post on 18 December. Australia Post attempted to deliver this letter on 19 December. Now, 2 January 2012, we are still awaiting a reply.

The full sequence of events relating to this issue is given below (item 1).

The main inconvenience and danger of the tree to our neighbour appears to be the overhanging nature of the tree. If the overhanging part (about 80%) of the tree is removed, this danger and the inconvenience of leaf litter would be largely alleviated. We understand from the Shire of Kalamunda Building Information Sheet 11 that neighbours have the right to cut off any branch at the point where it overhangs their property. Further, that they can do this without speaking or writing to their neighbours but that "it is a good idea to let them know there is a problem".

If the residents at 81 Falls Road considered the overhanging parts of the tree to be dangerous, then it is surprising that they did not discuss this with us and/or remove the overhanging branches long ago. They have been our neighbours for about 9 years and the tree has not enlarged much during this time. It is therefore surprising that they have waited until now, after our house was up

for sale, before raising the matter, apparently with us and the Shire of Kalamunda all at once, as they have not waited for our reply.

The second reason given in your letter and arboriculturalist's report, subsequently obtained from the Shire of Kalamunda on 23 December through the Freedom of Information Request, alleging that the tree is dangerous is termite infestation, interpreted in the report as recent and active. However this interpretation is incorrect. The tree has been affected by termites in the past. During the past 30 years our property has been inspected and treated for termites annually. The termite activity in this tree was promptly dealt with and subsequently from time to time the tree has been treated to ensure that termite activity does not recur. Our last annual termite inspection and treatment was on 16 March 2011, but because we intended to sell our property, we had a further inspection of the house and garden on 12 October 2011, just before putting our property on the market on 2 November. At that time, the tree was included in the retreatment of areas previously inhabited by termites to ensure that there would not be any reinfestation. In addition to the professional treatment, we also maintain frequent inspection for termite activity throughout our property because, included in our annual fee with the pest control company, is an obligation that they will treat any outbreak of termite activity that may occur during the year, as it occurs. Therefore we are certain that the arboriculturalist did not see any active or recent termite activity.

The secretive behaviour of our neighbours at 81 Falls Road in getting an arboriculturalist to inspect our tree and then raising a concern with the Shire of Kalamunda before talking to us and discussing the matter is part of a consistent pattern during their years of residence. During this time there have been several complaints to the Shire of Kalamunda that we have only heard about through Shire personel dealing with the complaints. The complaints we know about include dog barking, bonfires, our pool and now a tree. However, our dog rarely barks and only when provoked, and we have only had one bonfire a year and always on a week day when it would cause least disturbance to neighbours. There have also been complaints to the Shire of Kalamunda about discharge of water from our swimming pool into a watercourse that passes along the edge of our property. The Shire of Kalamunda sent an officer to investigate in late 2009 and advised that what we were doing was allowed but that new guidelines from the Water Authority recommended that it was better to discharge pool water some distance from a waterway. Therefore we volunteered to discharge the water several metres from the brook and undertook the necessary changes. However, early in 2010 we received a letter from the Shire of Kalamunda saying there had been a complaint that we were discharging pool water into the waterway, an allegation that was unfounded.

We cannot complain about the unusual behaviour of our neighbours in raising concerns and complaints about our property directly with the Shire of Kalamunda and not talking to us, but we are concerned about the way the Shire of Kalamunda deals with these complaints. In some cases the Shire of Kalamunda called us by phone and/or sent an officer to evaluate the situation directly, but we are dismayed that in most cases we know about, the Shire of Kalamunda has accepted these complaints and passed them on to us without talking to us to see if the complaints are reasonable or soundly based. **We suggest that it would be more appropriate if the Shire of Kalamunda sought to hear both sides of any complaint before pronouncing a judgement.**

If our neighbours wish to remove the overhanging part (about 80%) of the tree we are willing to pay for half the cost of the cutting and removal if this is arranged whilst we are still in posession of 77 Falls Road. We expect that this would be reasonable and normal procedure and that this would normally follow discussion between the neighbours. If this part of the tree is removed it would no longer pose any danger to these neighbours.

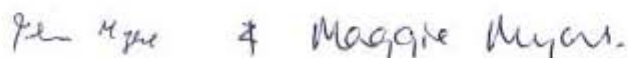
Therefore we request that the Shire of Kalamunda withdraw the Section 3.25 Notice Requiring Work of 21 December to remove or make safe the allegedly dangerous tree until the Shire has given more consideration to the matter contained in this letter and attached correspondence.

We hope you will, with some urgency, be able to respond to this request. We have a removalist arranged for 10 January and thereafter communication will be slower as we will be residing in Albany where we have not yet installed telephone and email connections.

It has been a pleasure to live in the Shire of Kalamunda during the past 30 years and to be part of this vibrant community in a beautiful neighbourhood. It has been a privilege to have been able to contribute a great deal of time and effort to the running of community organisations, to schools, cubs and scouts, the Kalamunda Community Learning Centre, Kalamunda History Village, and to design the former Shire logo as well as other community projects.

With best wishes for 2012

Yours sincerely,

Handwritten signature of John and Maggie Myers in cursive script.

John and Maggie Myers

CC. Rhonda Hardy, Director Corporate and Community Services

Attn. Sarah Griffiths, Engineering Personal Assistant

ITEM 1

**SEQUENCE OF EVENTS  
RELATED TO THE RAISING OF THE ISSUE OF THIS TREE**

**For some years** Our neighbours at 81 Fall Road have furtively been depositing twigs and leaf litter from the tree over the fence, which we understand is their prerogative. It would have been polite if they had spoken to us about the matter.

**Friday 9 September 2011** Standing close to this tree, Mrs Fitzgerald made a frenzied outburst over the fence regarding a bonfire we were having. It was brought to her attention that much of the vegetation being burnt was what they had put over the fence. She responded saying that the tree should be cut down to remove this inconvenience. This was the first and only time they have spoken to us about the tree since they became neighbours about 9 years ago, contrary to the statement in their letter (Item 2 below).

**Wednesday 2 November** Our property at 77 Falls Road, Lesmurdie, was advertised for sale.

**Monday 14 November** Offer of purchase received.

**Tuesday 22 November** Offer of purchase accepted.

**Thursday 24 November** Ken of Cedar Trees, tree lopping, worked on the adjacent property, 81 Falls Road, and was sent around to us at 6 pm by the Fitzgeralds to ask if we had any trees that needed pruning. I said not as we had recently finished tree pruning before putting our property up for sale

**Monday 28 November** Report by arboriculturalist, subsequently received from the Shire of Kalamunda on 23 December, indicated that he or she inspected a tree on our property from the adjacent property through thick vegetation on this day.

**Tuesday 29 November** Letter written by our neighbours Mr and Mrs Fitzgerald and sent to us by Registered Post raised a concern that this tree was dangerous and asked for it to be removed. This was the first and only time that they have communicated concern about any danger posed by this tree since they became neighbours about 9 years ago. They stated that we should reply in writing to this letter within 21 days (ie by Tuesday 20 December).

**Wednesday 30 November** This letter was delivered to us.

**Thursday 8 December** Letter and report on the tree was written by an arboriculturalist for Mr and Mrs Fitzgerald. Subsequently we saw a censored copy on 23 December sent to us by the Shire of Kalamunda.

**Saturday 17 December** We wrote a reply to the letter from Mr and Mrs Fitzgerald indicating our advice from the Shire of Kalamunda that they had the right to remove any branches from any of our trees where they cross our property boundary. If this was done, we considered that the tree would not pose any danger to them. We informed them that we were already committed to sell our property and that it would be up to the new owners to decide whether they wanted to remove the remaining parts of the tree.

**Sunday 18 December** This letter was sent to Mr and Mrs Fitzgerald by Registered Post from Lesmurdie Post Office.

**Monday 19 December** Australia Post informed us that an attempt was made to deliver the letter to 81 Falls Road but it was not received and was taken to Walliston Postal Depot awaiting

instructions from Mr and Mrs Fitzgerald with whom a notice had been left. This letter was still awaiting collection on Friday 23 December.

**Wednesday 21 December** We had the tree inspected by a tree lopper who considered the tree to be in good health and he gave us a quotation for the removal of the parts of the tree that overhang the property boundary.

**Wednesday 21 December** Letter was written by Rhonda Hardy, Shire of Kalamunda, indicating that they had received an arboriculturist's assessment of the tree and instructing us to make the tree safe according to Local Government Act 1995, Section 3.25, schedule 3.1, division 1. The letter indicated that the work was to be undertaken within 42 days unless we objected to the Shire Council under sections 9.5 and 9.7 of the Act, necessary details that were not enclosed.

**Thursday 22 December** We received this letter and at 4.30 pm, following the advice of the letter, called Sarah Griffiths at the Shire of Kalamunda by telephone. There was no reply but Karen took a message. The timing of this letter a day before the Shire's 11 day Christmas break, in addition to our removal to Albany on 10 January 2012 complicates the resolution of this matter.

**Friday 23 December** 9 am Sarah Griffiths called by telephone indicating that she would send the relevant Act by email, however it was later found that the file was corrupted and could not be opened. Brett Byfield was also contacted regarding access to the report by the arboriculturist, and we followed by an email request for access to this report so that we could be informed of the nature of the arboriculturist's findings. We received a partly censored copy of this report by email attachment that could be opened.

**Saturday 24 December - Monday 2 January** Shire Office closed and so no further actions were possible.

**Tuesday 3 January** We delivered a reply to the letter from the Shire dated 21 December (ref. FL-02/77) to the Shire Office and sought discussion with Sarah Griffiths, as instructed in the Shire's letter.

ITEM 2

**BJ & HM Fitzgerald**  
81 Falls Road  
Lesmurdie - 6076 - W.A.

Tuesday, 29 November, 2011

The Owners  
Residential Property  
77 Falls Road  
Lesmurdie - 6076 - W.A.

attention: **Mr. J & Mrs. M Myers**

Dear Sir & Madam,

Re: **REMOVAL OF DANGEROUS GUM TREE**

After making repeated verbal requests over 9 years, we, Brian & Heather Fitzgerald, the owners of 81 Falls road, Lesmurdie, do herein formally request you to remove the gum tree located on your property that is approximately 1 metre from the boundary of our adjoining properties.

This gum tree is overhanging our property by 80% and directly creates a dangerous hazard to our carport, that houses 2 vehicles, our garage and, if it falls in high wind and/or fire, directly impacts on at least 3 bedrooms in our home. In the event of fire, we have no chance of escape from damage.

We give permission for a fully qualified, with experience in the removal of such large trees, and fully insured (current policy to be sighted by us) , tree removal contractor to enter our property to assist in the removal of this tree. Our Home & Contents insurance company and our Motor Vehicle insurance company have both requested that these conditions be met.

Under the Dangerous Trees section of the Local Government Act 1995, you have 21 days from the date of this letter to respond, in writing, to this request.

yours faithfully,

.....

*BJ & HM Fitzgerald*  
.....

**Brian & Heather Fitzgerald**



ITEM 3

77 Falls Road, Lesmurdie, WA 6076

17 December 2011

Mr B. and Mrs H. Fitzgerald,  
81 Falls Road, Lesmurdie, WA 6076

Dear Mr and Mrs Fitzgerald,

Thank you for your letter of 29 November 2011 expressing concern about a tree that overhangs your property and that you consider to be dangerous.

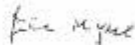
This tree was already there when you moved to live at 81 Falls Road about 9 years ago. Therefore it is surprising that: 1. you purchased the property if you considered the tree to be a danger; 2. that such a long time has elapsed before you raise this concern; and 3. that you raise this concern now, just as you see we are moving.

You have not, as you state in your letter, repeatedly spoken to us about this over nine years. Although it would have been easy to come round and talk to us, especially in recent years. I have been fully retired since 2005 and have spent most of the past 6 years in our house and garden. However, I have never even met Mr Fitzgerald and your letter is the first indication of your name. Mrs Fitzgerald has spoken to us perhaps three or four times since you became our neighbours, but only once mentioned the tree to which I think you refer. This was on 9 September 2011 when Mrs Fitzgerald came home about 3 pm, expressed concern about smoke from our bonfire and asked us to stop burning. The fire was almost out, the bulk of the burning having been carried out whilst Mrs Fitzgerald was away. When I mentioned that some of the bonfire comprised leaves from the tree that we were standing by, Mrs Fitzgerald said we should cut down the tree. However, in her next breath she said that we could carry on burning as much as we liked, clearly the opposite of what she wanted, and therefore the comment on the tree was equivocal.

Yes this tree does considerably overhang your property and you have the right to cut off any branches of the tree at the point where they cross your property boundary. Likewise, we have the right to remove branches from your trees where they cross our joint boundary. The Shire of Kalamunda advises that you do not need to let your neighbour know you intend to cut overhanging branches back to your property boundary, but that it is a good idea to let them know. We give you our permission to dispose of any material that you cut from plants originating from our garden that cross our boundary. We are committed to sell our house and garden but expect that the new owners would likewise give permission for you to dispose of such material. As for any removal of parts or all of the remaining tree on our side of the boundary, this would be up to the new owners to decide. We do not consider the tree to be any more dangerous than other trees in our garden. It appears to be well balanced, in good health, and provides a useful service in the sequestration of carbon dioxide and generation of oxygen. Collectively our trees probably take down much more carbon dioxide from the atmosphere than we add to it through the electricity, petrol, manufactured goods and food that we consume.

At this festive season, we send you our best wishes for a happy Christmas.

Yours sincerely,



Dr John Myers

## Attachment 5



19 January 2012

Shire of Kalamunda  
PO Box 42  
Kalamunda WA 6926

**ATTENTION:** Karen Tobiassen  
**Cc:** Dale Allan  
**RE:** 77 Falls Road, Lesmurdie

### Arboricultural Assessment

Dear Karen,

Further to my inspection of the identified tree ("Tree") at 77 Falls Road Kalamunda, the following is a brief of my findings, opinion, and recommendations for its future management.

#### **1 Scope of Works**

At the request of Karen Tobiassen of the Shire of Kalamunda, I have been engaged to:

- 1.1 Inspect and assess the current health, vigour and structural form of the identified Tree,
- 1.2 From the results of the inspection, assess any potential hazards that the Tree represents to any potential targets (people, structure etc.) identified to be within its projected fall zone, and more specifically any found on adjoining land; namely 81 Falls Road, Lesmurdie ("Adjacent Property"), and to
- 1.3 Provide future management guidelines in view of the risk management and the relevant legal responsibilities that are generally associated with tree 'ownership'.

#### **2 Limitations of the Assessment**

The substance of this report and opinions and recommendations provided have been based on:

- Evidence gained from an inspection of the Tree during the site inspection; the morning of 16 January 2012; and
- Anecdotal evidence provided by the owner of 77 Falls Road, Kalamunda (at the time of the inspection) on their known history of the Tree ("Anecdotal Evidence").

It should be noted that a comprehensive study of the root plate movement of the Tree has not been undertaken as part of this assessment.

It should also be noted and acknowledged that a tomographic scan of the main stem of the Tree has also not been undertaken as part of this assessment.

Both of these factors could have implications on the opinion and recommendations provided in this report.

**ARBOR logic**  
A.C.N.: 107 194 061  
Ph: (08) 9240 7555

ARBORICULTURAL CONSULTANCY  
A.B.N.: 66 566 369 687  
email: [jason@arborlogic.com.au](mailto:jason@arborlogic.com.au)

### 3 Key Findings from the Assessment

#### 3.1 General Attributes of the Tree



<b>Species;</b>	Tasmanian Blue Gum ( <i>Eucalyptus globulus</i> )
<b>Approximate Height</b>	18 - 20 metres
<b>DBH (Trunk Calliper)</b>	880 mm
<b>Canopy Spread</b>	16 – 17 metres North/South 14 – 15 metres East/West

#### 3.2 Health Condition

Based on the size and condition of its leaf mass and overall volume of live canopy (leaf) mass, the Tree showed to be in good health at the time of my inspection.

There is a small amount of deadwood material in its canopy, including some larger diameter sized portions.

However its appearance was indicative of deadwood that occurs as part of the natural growth processes of trees, and there were no noticeable pests or disease pathogens that could have a major adverse affect on its health.

#### 3.3 Structural Condition

The structural condition of the upper canopy of the Tree is considered to be fairly typical for a specimen of this species.

The Tree was noted to be leaning to the west, and as a result a large percentage of the Tree was noted to overhang the boundary to the Adjacent Property.

Closer inspection of the Tree's root zone showed no noticeable evidence of any heaving, cracking, or movement and it appeared to be root stable at the time of my inspection.

Note: Minor cracks were noted in the concrete driveway directly adjacent to the Tree. However their appearance and presence of moss/lichen in the cracks suggested that they have been present for a prolonged period of time.

Review of historical aerial images of the Tree (available at Nearmap.com) show no change to the position of the Tree since January 2008, and Anecdotal Evidence provided stated that the Tree has been on the same lean ever since they have known it; some 30 years.



As such the lean of the Tree was considered to have occurred naturally over time as it matured; possibly as a result of prevailing wind factors and/or the influence of other adjacent trees.

Through the use of acoustic techniques, no major cavities or areas of extensive decay were detected in the sections of its main stem structure that were reachable from ground level.

I did note the presence of active termites at the point of where a branch had been previously removed. Cursory investigation showed the termites to be relatively localised, and through the use of acoustic techniques the extent of wood degradation they may have caused looks to be comparatively minor and localised to the point of wounding from the branch removal at the branch collar.

There was no evidence of any history of branch failures having occurred in the Tree.

### 3.4 Tree Location in Relation to the Areas of Potential Targets Identified

The Tree was noted to be situated close to the boundary to the Adjacent Property.

Given its lean, a large percentage of the Tree was noted to overhang the boundary to the Adjacent Property.

An extent of the Canopy of the Tree was also noted to overhang the main dwelling on the Adjacent Property as can be seen in the images above.

The main dwelling on the Adjacent Property was therefore deemed to be the primary potential Target should branch or complete Tree failure occur.

#### 4. Comments on my Observations

Based on my observations, this Tree is considered to be a good mature specimen of its given species, it shows to be in good health and despite the fact that it has grown on a lean it has what is considered to be a fairly typical structural form for a specimen of its given species.

Whilst it is acknowledged that the Tree has developed on a lean towards the Adjacent Property, with the absence of any evidence of any root plate movement, cracking or heave at the time of my inspection the Tree is considered to be root stable at this time.

With regards to the risks associated with this Tree, as the Tree appears to be root stable I consider the risk of it falling at, near to or just below ground level to be unlikely.

As such based on the available evidence to date it is therefore considered that smaller lateral branches are the most likely to fail; should any failure occur.

It should however be noted and acknowledged at this point that Tasmanian Blue Gum are generally considered to be a relatively low risk species, and incidences of significant branch failure events are relatively uncommon, and other than the occasional smaller diameter sized branch failure (i.e. branches <50mm in diameter) during storm events (which can of course affect any tree regardless of its size, species, age or condition) branch failures in specimens of this species in this consultants experience tend to be dead branches (which again can of course fail on any tree regardless of its size, species, age, or condition).

Furthermore it should also be noted and acknowledged at this point that there is no visible history of any live branch failures having occurred in this Tree at this time.

Lastly, it should also be noted and acknowledged at this point that the size of part that is considered most likely to fail is unlikely to cause much in the way of damage to the permanent 'static' Target<sup>1</sup> within its likely fall zone; namely the main dwelling on the Adjacent Property.

As such based on these risk management variables, I consider any risks that may be associated with this Tree to be well within what would be considered to be an acceptable level, and well within the realms and scope of management at this stage.

The presence of the active termites is however of some concern, and left untreated they (termites) can have the capacity to cause extensive degradation of the heartwood (and false heartwood in the larger supportive root and primary branch structures) of specimens of this species; thus affecting their structural integrity and in-ground stability.

However based on cursory investigation through the use of acoustic techniques the extent of degradation that they may have caused looks at this stage to be minor; although it would warrant further investigation as part of the future management of this Tree and after the termites have been effectively treated.

<sup>1</sup> QTRA guidelines suggest the size of part required to cause (what would be considered to be) 'significant' damage to a built structure typically needs to be 350 – 450mm in diameter or greater. Smaller diameter sized parts may cause some damage. However any damage caused from such parts is usually readily repairable and the roof structure of the building typically absorbs any force of impact from the part and protects any occupants from harm.

**5. Opinion**

Based on the available visual and anecdotal evidence provided it is in my opinion that:

- 5.1 This is a reasonably good mature specimen of its species, and despite its lean it appears to be root stable at this time.
- 5.2 Any risks associated with the Tree are considered to be relatively 'low' and well within what would generally be considered an acceptable level, and as such in my opinion this Tree does not appear to represent an unmanageable endangerment to persons or things on adjoining land at this stage.
- 5.3 As such I would support and recommend its retention at this stage based on the findings from my visual inspection of the Tree.

**6. Recommendations**

- 6.1 At this stage, based on my visual observations from ground level I would recommend and support the retention of this Tree.
- 6.2 I recommend that selective canopy works be undertaken within the next 4 - 6 weeks from the date of this report to remove any major deadwood from the canopy of the Tree i.e. any dead stems with a diameter of 25 - 30mm or greater;
- 6.3 In an effort to appease any issues with canopy overhang to the Adjacent Property I would recommend that the rightful Tree owner gives consideration to the removal of three lateral branches identified on the image below in their entirety which would provide greater (but not full) clearance over the boundary and main dwelling on the Adjacent Property.



Notes on Canopy Works

- Overall canopy thinning is not considered necessary at this stage.
- A height or canopy reduction is not recommended to occur.
- Providing greater (or even full) clearance over the boundary to the Adjacent Property other than what will be provided by the undertaking of the removal of the three branches detailed above is not considered necessary or recommended to occur.
- All tree works must be undertaken by qualified (minimum of certificate 3 arboriculture) and experienced tree surgeons, and works are to comply with Australian Standards 4373 (2007); *Pruning of Amenity Trees*.

6.4 I would recommend the immediate implementation of a termite treatment/control program.

Method of control is strongly recommended to be non-invasive to the Tree; i.e. no drilling into the Tree is to occur.

6.5 A re-inspection of the Tree is recommended to be undertaken by a suitably qualified and experienced independent arboricultural consultant on an annual cycle, with the next inspection to be undertaken no later than January 2013.

I would also suggest that at that time the rightful Tree owner gives strong consideration to the inclusion of a tomographic scan of the main stem structure of the Tree as part of the next scheduled inspection.

I would also suggest that the rightful Tree owner gives strong consideration to the inclusion of a more comprehensive study of the root plate movement of the Tree as part of the next scheduled inspection.

6.6 Lastly, I would recommend that in the event of any branch failures  $\geq 100\text{mm}$  in diameter occurring on this Tree before the next inspection is due and subsequent to the recommended works being undertaken then the future management and retention of this Tree is to be re-assessed at that time

I have based the above opinion and recommendations on:

- 1 The current health condition of the Tree;
- 2 The evidence gained from the visual inspection of the structure of the Tree;
- 3 The known natural species characteristics of its given species;
- 4 The location and proximity of the Tree in regards to the identified areas of potential Target; and
- 5 The level of risk that this Tree is expected to pose to the identified areas of potential Target once the above recommended works have been undertaken.

If you have any queries regarding the findings of this report, or if I can be of further assistance, please do not hesitate to contact me.

Yours sincerely



**JASON ROYAL**

Dip. Arboriculture (UK)  
Tech. Arbor A

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**ARBORICULTURAL CONSULTANCY**  
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**Disclaimer:**

This advice has been provided in good faith and based upon the material information provided by the Client to Arbor logic, and based on the visual inspection of the tree(s) at the time this advice was prepared.

Arbor logic does not accept liability arising out of loss or damage that results from: -

- Material information not being provided by the Client to Arbor logic at the time this advice was prepared.
- The provision of misleading or incorrect information by the Client or any other party to Arbor logic upon which this advice was prepared.
- This advice being used by the Client or any other party in circumstances or situations other than the specific subject of this advice.
- Failure by the Client to follow this advice.
- The action(s) or inaction(s) of the Client or any other party that gives rise to the loss of, or damage to, the subject of this advice.

The information provided in this advice may not be reissued or printed without Arbor logic's written permission.

It is also important to take into consideration that all trees are living organisms and as such there are many variables that can affect their health and structural properties that remain beyond the scope of reasonable management practices or the advice provided in this report based on the visual inspection of the tree(s).

As such a degree of risk will still remain with any given tree(s) despite the adoption of any best management practices or recommendations made in this report.

**ARBOR logic**

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## Attachment 6



**From the office of the  
Director Corporate & Community Services**

15 March 2012

Mr M and Ms K Payne  
77 Falls Road  
LESMURDIE WA 6076



Dear Mr & Ms Payne

The Shire of Kalamunda has been made aware that you are now the owner of the property at 77 Falls Road Lesmurdie on 20 January 2012. The reason for this correspondence is to make you aware of an issue relating to a South Blue Gum located 1.8 metres from your fence line. In December 2011 the Shire issued a *Notice Requiring Work to be Done* in accordance with Section 3.25 of the *Local Government Act 1995*.

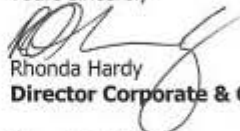
The *Notice Requiring Work to be Done* was issued following a complaint by owners of the adjoining property and the provision, by the owners of 81 Falls Road Lesmurdie, of an Arborist Report indicating the tree was required to be "made safe by removal or other appropriate means to prevent the tree endangering the safety of persons and things on the adjoining land".

In January 2012 the Shire itself engaged an Arborist to provide a report on the condition of the tree on your property following correspondence from the then owners of 77 Falls Road. This report supported the retention of the tree but recommended some remedial action be taken to ensure the tree was safe. The report received in January 2012 is included for your information.

The Shire advises the *Notice Requiring Work to be Done* is withdrawn. In the absence of the Notice the Shire has no jurisdiction or control over the tree on your property. It is, however, strongly recommended in the interest of good neighborhood relations action is taken by yourself to ensure the tree on your property is safe and in no way endangering property or persons which may be in its vicinity.

If you have any queries in relation to this matter please contact the Sarah Griffith, Personal Assistant to the Director Development and Infrastructure Services, on 9257 9999.

Yours sincerely



Rhonda Hardy  
**Director Corporate & Community Services**

Cc: Mrs H Fitzgerald  
81 Falls Road  
Lesmurdie WA 6076

**Shire of Kalamunda**  
2 Railway Road, Kalamunda WA 6076  
PO Box 42, Kalamunda WA 6926  
T: (08) 9257 9999 F: (08) 9293 2715  
E: kala.shire@kalamunda.wa.gov.au  
[www.kalamunda.wa.gov.au](http://www.kalamunda.wa.gov.au)

## Attachment 7



**BOWDEN TREE CONSULTANCY**

ABN: 51925884945

Address: P.O. Box 499 Scarborough W.A. 6922

Phone: 0438 936 679

Email: [info@bowdentree.com.au](mailto:info@bowdentree.com.au)

Website: [www.bowdentree.com.au](http://www.bowdentree.com.au)

**PiCUS Sonic Tomograph Testing and Summary Report**

Prepared for: Shire of Kalamunda

Date of Test: 15 June 2012

Site Details: 77 Falls Road, Lesmurdie

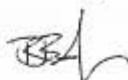
### **A BASIC KEY TO ANALYSING PICUS REPORTS**

The following points will assist when you visually assess the test results against the tree.

- a) Sensor one is always located to the northern side of the tree unless specified. This may vary slightly depending on where sensor point one is located on the trunk. Where aerial testing of branches above ground level has been undertaken, the north point arrow indicates the topside of the branch.
- b) The test height is always measured at sensor one unless specified.
- c) The red line in the photograph of the tree demonstrates the approximate height at which the test was conducted.
- d) The red ring in the test result (2 dimensional picture) when included is the t/R ratio. The t/R ratio red line is set at 15 percent.
- e) In some test results the degree measurement may be included; this could be the open section of a wound or hollow, or it may be an area of active fungus. These areas are always identified with blue lines.
- f) In some test results other measurements may be mentioned; this will be an approximate measurement of the depth of decay or fungus. This is shown with a blue line.
- g) In some cases, depending on the genus and species of the fungus, the active fungus wood area may not be visible to human eyes.
- h) In most cases, depending on the genus and species of the fungus, the incipient wood affected area will not be visible to human eyes.
- i) The PICUS Sonic Tomograph is mostly accurate with the colour coding produced; at times the test image produced may vary to what will be visually observed when the test area is exposed. It is important that only trained professionals make comments and recommendations regarding any test results cross examinations.
- j) In some test results there will be an overlay of lines from sensor to sensor; where the lines actually cross one and other is the accurate point of the test result, and the colour reading should be taken from this point.
- k) The rating system for the tree's condition at the test point is based on sound wood percentages in the test result:

<b>Excellent</b>	<b>Very Good</b>	<b>Good</b>	<b>Average</b>	<b>Further Management</b>
Above 90%	60 - 89%	40 - 59%	20 - 39%	<20%

Yours sincerely,



**Brad Bowden**  
Principal  
Bowden Tree Consultancy

Dip. Arb. (Univ. Mels.)  
ISA Certified Arborist AU-00204

PiCUS Sonic Tomography Testing at 77 Falls Road Leasmurrie for the Shire of Kalamunda

**Botanical Name**

**Common Name**

**Test Height**

**Test Circumference**

The PiCUS® Sonic Tomograph test result indicates 37% of the test area is solid (high density) wood. There is 13% incipient wood (wood being altered). The remaining 50% is active degradation (low density) wood.

The pest and/ or pathogen are likely to have entered the tree through the root plate.

The radial amount of solid wood adjacent to sensor number 9 was measured at 6cm. The incipient degradation between sensor numbers 1 and 2 was measured at 6% of the total circumference.

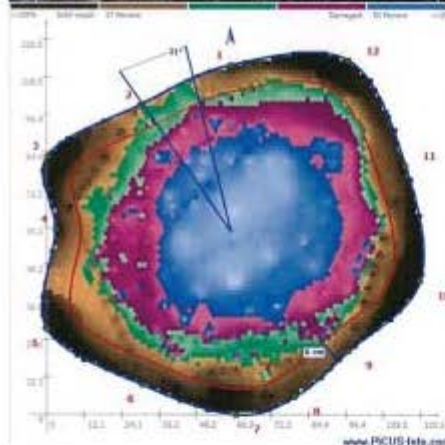
It is observed that new wood growth increments are evident at sensor numbers 3, 5, 7 and 10-12.

***Eucalyptus bicostata***

**southern blue gum**

**80mm above ground level**

**3780mm at test height**



**CONCLUSION**

The test result provides evidence that the tree is still structurally sound at the test point and in average condition. Adaptive growth (new wood) is evident and is maintaining an evenly loaded structure at present.

PiCUS Sonic Tomography Testing at 77 Falls Road Leamurdie for the Shire of Kalamunda

**Botanical Name**

**Common Name**

**Test Height**

**Test Circumference**

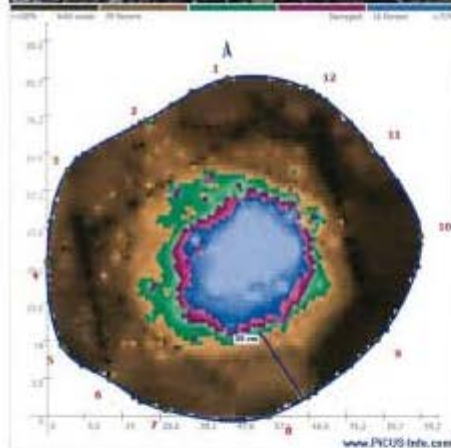
The PiCUS® Sonic Tomograph test result indicates 76% of the test area is solid (high density) wood. There is 8% incipient wood (wood being altered). The remaining 16% is active degradation (low density) wood.

The pest and/ or pathogen are likely to have entered the tree through the root plate.

The radial amount of solid wood adjacent to sensor number 8 was measured at 20cm.

It is observed that new wood growth increments are evident at all sensors.

***Eucalyptus bicostata***  
**southern blue gum**  
**890mm above ground level**  
**2930mm at test height**



**CONCLUSION**

The test result provides evidence that the tree is still structurally sound at the test point and in very good condition. Adaptive growth (new wood) is evident and is maintaining an evenly loaded structure at present.

PICUS Sonic Tomography Testing at 77 Falls Road Lesmurdie for the Shire of Kalamunda

**Botanical Name**

**Common Name**

**Test Height**

**Test Circumference**

The PICUS® Sonic Tomograph test result indicates 62% of the test area is solid (high density) wood. There is 20% incipient wood (wood being altered). The remaining 18% is active degradation (low density) wood.

The pest and/ or pathogen are likely to have entered the tree through the root plate, as well as through previous pruning wounds above the test point.

The radial amount of solid wood adjacent to sensor number 6 was measured at 11cm. The solid, incipient and active degradation area between sensors numbers 9 and 11 was measured at 12% of the total circumference.

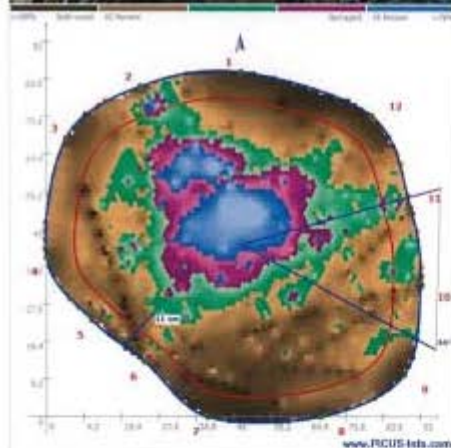
It is observed that new wood growth increments are evident between sensor numbers 1, 3, 4, 7-9 and 12.

***Eucalyptus bicostata***

**southern blue gum**

**1630mm above ground level**

**2880mm at test height**



**CONCLUSION**

The test result provides evidence that the tree is still structurally sound at the test point and in very good condition. Adaptive growth (new wood) is evident and is maintaining an evenly loaded structure at present.

PiCUS Sonic Tomography Testing at 77 Falls Road Lesmurdie for the Shire of Kalamunda

	
<p><b>Actual view of the tree - looking towards the south</b></p>	<p><b>3D PiCUS view of the tree - looking towards the south and from the highest test to the lowest test</b></p>
	
<p></p>	<p><b>3D PiCUS view of the tree - looking towards the north and from the lowest test to the highest test</b></p>

**Recommendation:** Remove tree to ground level in the short term (0-2 years).

**Rationale:** Trunk lean is significant and to the north-north-west, with an orientation of fall towards the neighbouring (double) carport, driveway and principal pedestrian access way at the front of the house. The residual amount of solid wood at the root crown is negligible on the tensile/ load-bearing (south-east) side of the tree. Further crown growth will increase the lever arm and subsequent loading, augmenting the likelihood of catastrophic failure.

**LIMITATION OF LIABILITY**

Bowden Tree Consultancy are tree specialists who use their qualifications, education, knowledge, training, diagnostic tools and experience to examine trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risk of living near trees. Clients may choose to accept or disregard the recommendations of this assessment and report.

Bowden Tree Consultancy cannot detect every condition that could possibly lead to the structural failure of a tree. Trees are living organisms that fall in ways that the arboriculture industry does not fully understand. Conditions are often hidden within trees and below ground. Unless otherwise stated, observations have been visually assessed from ground level. Bowden Tree Consultancy cannot guarantee that a tree will be healthy or a low risk of harm under all circumstances, or for a specified period of time. Likewise, remedial treatments cannot be guaranteed.

Treatment, pruning and removal of trees may involve considerations beyond the scope of Bowden Tree Consultancy's service, such as property boundaries and ownership, disputes between neighbours, sight lines, landlord-tenant matters and other related incidents. Bowden Tree Consultancy cannot take such issues into account unless complete and accurate information is given prior or at the time of the site inspection. Likewise Bowden Tree Consultancy cannot accept responsibility for the authorisation or non-authorisation of any recommended treatment or remedial measures undertaken.

In the event that Bowden Tree Consultancy recommends retesting or inspection of trees at stated intervals, or installs any cable/s, bracing systems and support systems, Bowden Tree Consultancy must inspect the system installed at intervals of not greater than 12 months, unless otherwise specified in written reports. It is the client's responsibility to make arrangements with Bowden Tree Consultancy to conduct the re-inspection.

Trees can be managed, but they cannot be controlled. To live or work near a tree involves a degree of risk.

All written reports must be read in their entirety; at no time shall part of the written assessment be referred to unless taken in full context with the whole written report.

If this written report is to be used in a court of law, or any other legal situation, Bowden Tree Consultancy must be advised in writing prior to the written assessment being presented in any form to any other party.



## Attachment 8



**From the office of the  
Chief Executive Officer**

10 July 2012  
Our Ref: IE-127771; ILT-125531



Mr MK & Mrs KL Payne  
77 Falls Rd.  
LESMURDIE WA 6076

Dear Mrs Payne,

**Request for Removal of Tree on 77 Falls Road**

I refer to the ongoing matter regarding the tree on your property and concerns from your neighbour regarding her safety.

The Shire considers its trees an integral part of the reserve and street environment. When considering applications for removal of trees, the Shire must assess the health of the tree, aesthetic value in relation to the existing environment, the form and character of the tree (including structure, age, size and species) and surrounding infrastructure (including any current and potential future damage).

The Shire has now received the PiCUS test report of the *Eucalyptus bicosta*, Southern Blue Gum at 77 Falls Road, Lesmurdie. This test is to assess the amount of degradation present within the tree trunk.

It has been noted at the point of the first test (base of the trunk) has very average adaptive growth which causes concern as to the stability of this tree as it becomes larger.

After taking this information into consideration along with the Arbour reports we already have, the Shire is issuing the attached notice for the *Eucalyptus bicosta*, be removed in accordance with Section 3.25 of the *Local Government Act 1995*.

If you have any queries, or would like to discuss the matter further, please contact Karen Tobiassen on 9257 9847.

Yours sincerely

James Trail  
**Chief Executive Officer**

**Shire of Kalamunda**  
2 Railway Road, Kalamunda WA 6076  
PO Box 42, Kalamunda WA 6926  
T: (08) 9257 9999 F: (08) 9293 2715  
E: kala.shire@kalamunda.wa.gov.au  
[www.kalamunda.wa.gov.au](http://www.kalamunda.wa.gov.au)



**NOTICE PURSUANT TO SECTION 3.25 OF THE LOCAL GOVERNMENT  
ACT 1995 REQUIRING THE LAND OWNER TO CARRY OUT THE WORK  
SPECIFIED IN THE NOTICE**

To: Mr MK & Mrs KL Payne  
77 Falls Road  
Lesmurdie WA 6076

Notice is hereby given that the following work is required to be carried out on your property at 77 Falls Road within 42 days from the date of this notice.

**Ensure that the *Eucalyptus bicosta* tree at 77 Falls Road, Lesmurdie WA 6076 which has been deemed to pose a danger to any person or thing on the adjoining property, is made safe.**

A person who fails to comply with this notice commits an offence under section 3.25(6) of the *Local Government Act 1995*.

If the person who is given the notice fails to comply with it within the specified time, the Shire of Kalamunda may do anything that it considers necessary to achieve, so far as is practicable, the purpose for which the notice was given.

The Shire may recover the cost of any works carried out, as a debt due from the person who failed to comply with the notice.

**Rights to objection and review**

An objection to the giving of this notice may be lodged by completing the attached form, and forwarding the form to the Chief Executive Officer, 2 Railway Road, Kalamunda, within **28 days** of the service of this notice. The objection will be considered by Council, and you will be advised of their decision.

You may also apply to the State Administrative Tribunal for a review of the giving of this notice. You may do this –

- within **42 days** of the service of this notice, if you have not lodged an objection; or
- if you have not been given notice of the result of your objection within 35 days of you lodging the objection, within **42 further days** (77 days in total from the date you lodged your objection); or
- within **42 days** of receiving notice of Council's decision on your objection.

Signed for and on behalf of the Shire of Kalamunda this <sup>15</sup> day of July, 2012.

  
.....  
James Trail  
Chief Executive Officer



**Form 4**  
[reg. 33(1)]  
*Local Government Act 1995*  
*Local Government (Functions and General) Regulations 1996*

**OBJECTION UNDER SECTION 9.5 OF THE ACT**

To the **Shire of Kalamunda**

I, .....  
(full name of person objecting)

of .....  
.....  
(postal address of person objecting)

hereby object to the **issuing of a notice under section 3.25 of the Local Government Act 1995** to ensure that the *Eucalyptus bicosta* tree located at 77 Falls Road, Lesmurdie WA 6076 be made safe.

The grounds of my objection are as follows:  
.....  
.....  
.....  
.....  
(give details of grounds of objection)

In support of my objection I attach the following:  
.....  
.....  
.....  
.....  
(plans, specifications, letters, notices, or other documents, if appropriate)

Dated the ..... day of ..... 20.....

.....  
(signature of person objecting)

## Attachment 9



**Form 4**  
[reg. 33(1)]  
Local Government Act 1995  
Local Government (Functions and General) Regulations 1996

### OBJECTION UNDER SECTION 9.5 OF THE ACT

To the **Shire of Kalamunda**

I, MICHAEL KEN PAYNE  
(full name of person objecting)

of 77 Falls Rd  
LESURDIE WA 6076  
(postal address of person objecting)

hereby object to the **issuing of a notice under section 3.25 of the Local Government Act 1995**  
to ensure that the *Eucalyptus bicosta* tree located at 77 Falls Road, Lesmurdie WA 6076 be made safe.

The grounds of my objection are as follows: None

SEE ATTACHED

(give details of grounds of objection)

In support of my objection I attach the following:

(plans, specifications, letters, notices, or other documents, if appropriate)

Dated the 15<sup>th</sup> day of August 2012

M Payne  
(signature of person objecting)

**Attachment Re: Objection under section 9.5 of the Act**

- It was confirmed to us prior to the purchase of 77 Falls Rd by the Myers – on advice from the Shire of Kalamunda – that the tree did not require removal. Settlement was completed only after confirmation of this 'final' decision by the Shire.
- The cost for removal of the tree therefore is limited to the original parties, being the Shire of Kalamunda and the Myers. We do not intend to be involved in further discussion of payment for, or responsibility of, the removal of the tree.
- The Shire of Kalamunda has mis-managed this matter throughout the process with extensive delays and indecision thereby enabling the Myers to avoid removing the tree prior to the sale of the property, as was their intention. We will pursue a thorough review of the actions of the Shire should the Shire choose to argue the responsibility of the cost of removal.



Murray K Payne

77 Falls Rd, Lesmurdie

## Attachment 10

Our Ref: IE 133322

29 August 2012

Mr MK & Mrs KL Payne  
77 Falls Road  
LESMURDIE WA 6076



Dear Mr Payne

### **Request for Removal of Tree – Objection under section 9.5 of the Act**

Further to your objection dated 13 August 2012. The Shire provides the following additional information for each of your three concerns.

In regard to your first point, the Shire's letter of 15 March 2012 indicated the withdrawal of the *Notice Requiring Work to be Done*. However, in the penultimate paragraph it was also stated "in the interest of good neighbourhood relations action is taken by yourself to ensure the tree on the property is safe and in no way endangering property or persons which may be in its vicinity." Since that time, no works have been undertaken to resolve this matter.

On 15 June 2012 the Shire undertook a further PICUS test on the subject tree and it was recommended to "remove tree to ground level in the short term (0-2 years)." This recommendation is based on the risk of the tree causing damage. Based on the recommendation of this report, the Shire gave the second notice to do works on 10 July 2012.

In regard to your second point, as the owners of the property you are responsible for all issues relating to the property irrespective of previous decisions.

Finally in relation to your third point, the Shire notes that there were extensive delays in this process, however trees are living entities and are subject to change due to environmental impacts, growth, weather etc. As a result, it is appropriate for the Shire to reassess and make further requests despite the previous actions.

For these reasons the Shire will not be rescinding the notice. However, in order to expedite the matter, the Shire is willing to contribute a third of the cost of removal. The Shire will arrange quotes and submit an invoice to you for your two thirds share for payment.

Yours sincerely

Sam Assaad  
**Manager Infrastructure Operations**

**Shire of Kalamunda**  
2 Railway Road, Kalamunda WA 6076  
PO Box 42, Kalamunda WA 6926  
T: (08) 9257 9999 F: (08) 9293 2715  
E: kala.shire@kalamunda.wa.gov.au  
[www.kalamunda.wa.gov.au](http://www.kalamunda.wa.gov.au)

## 11.0 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

11.1 Nil.

## 12.0 QUESTIONS BY MEMBERS WITHOUT NOTICE

12.1 Cr Frank Lindsey – Council Amalgamations

Q. Is the Chair aware of well-founded rumours relating to the amalgamation of Kalamunda, Swan and Mundaring and that this information will not be released until after the State Election ?

A. This question was taken on notice.

12.2 Cr Geoff Stallard – Weekend Access to Ranger Services

Q. I had a call from a resident at the weekend who was unable to make contact with Ranger Services regarding a neighbour's fire, may Councillors call the Acting Chief Executive Officer in such circumstances?

A. The Acting Chief Executive Officer noted that he was more than happy for Councillors to contact him 'out of hours'.

12.3 Cr Justin Whitten – IT Audit

Q. Has there been any progress regarding the audit for IT infrastructure?

A. The Acting Chief Executive Officer asked the Director of Corporate and Community Services to answer; a Brief has been sent to five companies and the responses should be received shortly.

12.4 Cr Dylan O'Connor – Urban Artwork Project

Q. Cr Dylan O'Connor asked if he may use this opportunity to pass his thank to Alison Harpin for the excellent Urban Art Project?

A. Acting Chief Executive Officer thanked Cr Dylan O'Connor for his comments.

## 13.0 QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN

13.1 Nil.

## 14.0 URGENT BUSINESS APPROVED BY THE PERSON PRESIDING OR BY DECISION

14.1 **Confidential Item – Update on Forensic Audit in Relation to a Matter Affecting an Employee** (provided under separate cover)  
Reason for confidentiality – Local Government Act 1995: Section 5.23(2) (a), "a matter affecting an employee or employees".

This Report will be discussed at Item 15 of this Agenda, behind closed doors.

**15.0 MEETING CLOSED TO THE PUBLIC**

**15.1 Meeting Closed to the Public**

RESOLVED OCM 134/2012

**Voting Requirements: Simple Majority**

That the meeting go behind closed doors to consider **Confidential Item – Update on Forensic Audit in Relation to a Matter Affecting an Employee.**

Moved: **Cr Justin Whitten**

Seconded: **Cr Frank Lindsey**

Vote: **CARRIED UNANIMOUSLY (9/0)**

*The meeting closed to the public at 6.57pm*

**15.2 Suspension of Standing Orders**

RESOLVED OCM 135/2012

**Voting Requirements : Simple Majority**

That in accordance with Clause 18.1 of the Standing Orders all clauses in the Standing Orders be suspended.

Moved: **Cr John Giardina**

Seconded: **Cr Frank Lindsey**

Vote: **CARRIED UNANIMOUSLY (9/0)**

*Standing Orders were suspended.*

**15.3 Resumption of Standing Orders**

RESOLVED OCM 136/2012

**Voting Requirements: Simple Majority**

That the Standing Orders be Resumed.

Moved: **Cr Martyn Cresswell**

Seconded: **Cr Justin Whitten**

Vote: **CARRIED UNANIMOUSLY (9/0)**

*Standing Orders resumed and the meeting proceeded.*



- 15.4 **Confidential Item – Update on Forensic Audit in Relation to a Matter Affecting an Employee** (provided under separate cover).  
Reason for confidentiality – Local Government Act 1995: Section 5.23(2) (a), “a matter affecting an employee or employees”.

RESOLVED OCM 137/2012

<b>Voting Requirements: Simple Majority</b>
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That Council:

1. Notes the progress outlined in relation to the forensic audit including estimated increased time frame to completion of six to eight weeks.
2. Notes and endorses the information provided by Deloitte Touche Tohmatsu outlined in (Confidential Attachment 1).

Moved: **Cr Martyn Cresswell**

Seconded: **Cr Sue Bilich**

Vote: **CARRIED UNANIMOUSLY (9/0)**

- 15.5 **Meeting Reopened to the Public**

RESOLVED OCM 138/2012

<b>Voting Requirements: Simple Majority</b>
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That the meeting reopened to the public.

Moved: **Cr Martyn Cresswell**

Seconded: **Cr Noreen Townsend**

Vote: **CARRIED UNANIMOUSLY (9/0)**

*The meeting reopened to the public at 7.44pm*

## **16.0 CLOSURE**

- 16.1 There being no further business, the Chairman declared the meeting closed at 7.45pm.

I confirm these Minutes to be a true and accurate record of the proceedings of this Council.

Signed: \_\_\_\_\_  
Chairman

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2012