ITEM NO: 5.7
REPORT NUMBER: 183/21

TO:	**COUNCIL ASSESSMENT PANEL**
DATE:	**23 JUNE 2021**
SUBJECT:	**COUNCIL ASSESSMENT REPORT**
AUTHOR:	**A STAMATOPOULOS**
	DEVELOPMENT OFFICER - PLANNING
ATTACHMENTS:	**1. LOCALITY MAP**
	2. TREE LOCATION
	3. COUNCIL ARBORIST REPORT
	4. APPLICANT'S ARBORIST REPORT
	5. SUPPORTING LETTER BY BOTTEN LEVINSON LAWYERS
	6. LANDSCAPE ARCHITECT REPORT PROVIDED BY APPLICANT

DA NO.	:	110/00178/21
APPLICANT	:	THE EXECUTORS OF THE ESTATE OF LLORA SHIRLEY LE CORNU
LOCATION	:	28 STURT ROAD, BRIGHTON
DEVELOPMENT PLAN	:	CONSOLIDATED 2 JUNE 2016
ZONE AND POLICY AREA	:	RESIDENTIAL ZONE
NATURE OF DEVELOPMENT:		MERIT
PROPOSAL	:	REMOVAL OF A REGULATED CORYMBIA CITRIODORA. REFERENCE TREE NUMBER 11.
REFERRALS	:	ARBORIST
CATEGORY	:	ONE
RECOMMENDATION	:	DEVELOPMENT PLAN REFUSAL

1. Background

A land division is lodged on the subject site, DA 110/00535/20, which proposes 20 allotments from 2. This application was lodged to the Council on the 20 July 2020 and is currently on hold subject to matters relating to the regulated and significant trees being resolved. When the land division application was lodged the Council engaged an arborist to survey the site to identify the trees that are exempt from requiring approval to be removed and identify those subject to planning controls.

The arborist report identified eight trees worthy of retention, and the remainder as being exempt from requiring approval to be removed or considered to have a poor structure or declining health and warranted consent for removal. The applicant has subsequently lodged separate applications to apply to remove the trees that were recommended to be retained. A demolition application was also lodged and approved by the Council on the 29 September which seeks to demolish the existing dwelling and ancillary structures.

2. Site and Locality

The subject site measures 9,460m^2 in total area located over two allotments with a 93.5m primary frontage to Sturt Road. The subject site currently houses a detached dwelling along with ancillary structures in the form of outbuildings. The site is heavily vegetated with various trees primarily

located to the perimeter of the site and is dominated by soft landscaped grass areas. The surrounding locality is dominated by single-storey detached dwellings.

3. Proposed Development

The applicant seeks to remove a Corymbia Citriodora, which is located in the north-eastern side of the site adjacent to the rear boundary of 1 Noble Street Brighton. The tree is identified as "R11" in the tree location map produced by Arborman Tree Solutions.

4. Development Data

TREE DATA	
Aspect	
Species	Corymbia Citriodora
Tree Height	Greater than 20 metres
Tree Health	Fair
Structure	Fair
Circumference	2.46m
Recommendation	Retain

5. Procedural Matters

The application is a category one development subject to Schedule 9 Part 13 of the Development Regulations. The development does not fall within clause 25 of Schedule as it is not a tree located on Council owned land.

Part 1—Category 1 development

13 Except where the development falls within clause 25 of this Schedule, any development which comprises a tree-damaging activity in relation to a regulated tree.

6. Development Plan Provisions

HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – GENERAL SECTION – REGULATED TREES

REGULATED TREES	
Objectives	
1. The conservation of regulated trees that provide important aesthetic and/or environmental benefit.	The tree provides important aesthetic and/or environmental benefits
2. Development in balance with preserving regulated trees that demonstrate one or more of the following attributes: (a) significantly contributes to the character or visual amenity of the locality (b) indigenous to the locality (c) a rare or endangered species (d) an important habitat for native fauna	(a) The tree contributes to the character and visual amenity of the locality (b) The tree is not indigenous to the locality (c) The tree is not a rare or endangered species (d) The tree does not contain hollows or nesting sites indicating an important habitat for native fauna.

REGULATED TREES (Cont)	
Principles of Development Control	
1 Development should have minimum adverse effects on regulated trees.	Not applicable
2. A regulated tree should not be removed or damaged other than where it can be demonstrated that one or more of the following apply: (a) the tree is diseased and its life expectancy is short (b) the tree represents an unacceptable risk to public or private safety (c) the tree is causing damage to a substantial building or structure of value (d) development that is reasonable and expected would not otherwise be possible (e) the work is required for the removal of dead wood, treatment of disease, or is in the general interests of the health of the tree.	(a) The tree is considered to be in a good state of health (b) The tree is not an unacceptable risk to public or private safety (c) The tree is not causing damage to a substantial building or structure of value (d) Reasonable development on the site is possible with the retention of the tree (e) Not applicable
3. Tree damaging activity other than removal should seek to maintain the health, aesthetic appearance and structural integrity of the tree.	Not applicable

7. Summary of Assessment

The assessment of the tree was conducted subject to the Council Wide Regulated Tree Objectives and Principles of Development Control. The above assessment shows that there is little merit for the tree to be removed given it is in a healthy state, does not pose a risk to private or public safety, is not causing damage to structures of value, and will allow reasonable development to occur on the site if it is retained. Most importantly, the tree is considered to significantly contribute to the character and visual amenity of the locality.

The tree is located adjacent to the north-eastern boundary of the site adjacent to the rear boundary of 3 Noble Street Brighton. The tree is mature and contains a substantial height in excess of 20m, making it visible from various vantage points. The photos below were taken from Council's consulting arborist of the tree in question from various locations. The photos below are taken from various locations showing the tree in question.

Photo 1 (above) - Tree R11 can be viewed from Highet Avenue facing south, a distance of approximately 300 metres.

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Photo 2 (above) – Tree R11 can be viewed standing in front of 4 Noble Street facing south, a distance of approximately 60 metres.

Photo 3 (above) - Tree R11 can be viewed standing in front of 12 Noble Street facing south, a distance of approximately 100 metres.

It is evident that the tree is a notable feature and contributes to the amenity of the locality, as seen in the photos. The other matter worthy of discussion is the potential the tree has to halt significant development of the site. Given the site measures in excess of 9,400m^2 and the tree is located on the perimeter adjacent to the northern boundary, it is the Council's opinion that the retention of the tree will not unreasonably impact the development of the remainder of the site.

The applicant has provided evidence from a Landscape Architect to dispute that the tree *"significantly contributes to the character or visual amenity of a locality".* The test as to whether the individual tree *"significantly contributes to the character or visual amenity of a locality*" is subjective, it is not disputed that the tree is large, healthy, long-established, a notable feature in the locality, and can be seen from a great distance. The size of the tree is a significant contributing factor to its impact on the visual amenity of the locality.

8. Conclusion

The tree in question does not warrant support for its removal. The tree is in a healthy state and does not satisfy the relevant Council Wide Regulated Tree Objectives and Principles of Development Control to warrant its removal. The tree is a notable feature of the locality and will not restrict reasonable development occurring on the site.

1. The proposed development is not seriously at variance with the policies in the Development Plan.

2. Following a detailed assessment of the proposal against the provisions of the Holdfast Bay (City) Development Plan, the Council Assessment Panel considers that the proposed development is not consistent with the Development Plan and that Development Application 110/00178/21 be refused Development Plan Consent for the reason that it is contrary to:

- **General Section, Regulated Trees, Objectives 1 and 2(a); and**
- **General Section, Regulated Trees, Principles of Development Controls 2(a), (b), (c), (d).**

More specifically, the application does not meet the intent of the Development Plan in that the tree:

- **Is not diseased with a short life expectancy;**
- **Is not an unacceptable risk to private safety;**
- **Is not causing damage to a substantial building or structure of value;**
- **Will not restrict development that is unreasonable and expected; and**
- **Significantly contributes to the character and visual amenity of the locality.**