



# Minutes

## Special Meeting of Council

Friday 9 October 2009 at 7:05pm

Queenscliff Town Hall  
50 Learmonth Street, Queenscliff

### **Councillors**

Cr. Bob Merriman (Mayor)

Cr. Helene Butler

Cr. Lloyd Davies

Cr. David Mitchell

Cr. John Burgess

### **Officers**

Lenny Jenner - Chief Executive Officer

John Henderson, Public Places & Facilities Coordinator



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## 1. OPENING OF MEETING

7:05pm

## 2. APOLOGIES

Karen Hose - General Manager Planning & Places

Ev Wuchatsch - General Manager Governance & Community

## 3. PECUNIARY INTEREST & CONFLICT OF INTEREST DISCLOSURES

Nil

## 4. PLANNING, HERITAGE & COMMUNITY ASSETS

### 4.1 Tree Management, Removal and Replacement Strategy

**File:** QG 078-01-14

**Responsible Officer:** Public Places & Facilities Coordinator

## INTRODUCTION

The purpose of this report is to

1. Present two reports (1) Tree Management, Removal and Replacement Strategy for Princess, Citizens and Victoria Parks prepared by John Patrick P/L dated September 2009 (**Appendix 1**) and (2) Borough of Queenscliffe - Quantified Tree Risk Assessment - Selected trees in Princess, Citizens and Victoria Parks, Queenscliff prepared by Mr Dave Williams, ArbEcology dated 25 September 2009 (**Appendix 2**);
2. Present other legal and insurance related advice to inform Council's future management of trees in Princess, Citizens and Victoria Parks; and
3. Seek Council's endorsement of the Summary Report of agreed actions for Princess, Citizens and Victoria Parks based on the agreed position of John Patrick P/L and ArbEcology.

## BACKGROUND

### *History*

The Borough of Queenscliffe has undertaken a range of arboricultural and landscape assessments of Princess, Citizens and Victoria Parks with some reports dating back to 1985. These reports have

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recommended a range of actions including tree removal and major risk mitigation works on both native and introduced species.

A 1985 report on Princess Citizens Parks (Gerner, Sanderson, Faggetter and Cheeseman) identified a range of structural and appearance issues related to trees and effectively presented a long term plan for replacement of diseased and aged unsafe trees. Apart from a planting of Monterey Cypress along the northern end of Princess Park in the late 1980s the majority of recommended actions contained in the 1985 report remain outstanding.

Recent arborist reports identified a range of immediate public safety issues that resulted in Council resolving in November 2008 to undertake *'immediate tree removal and risk mitigation works as a matter of priority'*.

Three tree related incidents requiring police attendance have occurred in Princess Park in 2009 with two claims of damage to vehicles referred to the Department of Sustainability & Environment. Numerous other limb drops and branch failures have occurred in Princess and Victoria Parks over the last 12 months.

Consistent with Council's resolution *'to prepare a Tree Removal and Replacement Strategy for Princess, Citizens and Victoria Parks'*, a selective tender process resulted in John Patrick P/L being appointed in June 2009 to produce a 10 year strategy that provides direction to the Borough of Queenscliffe for the management, removal and replacement of trees in the three designated parks.

A further report to assess risk management in relation to identified trees was commissioned by Council and prepared by Mr Dave Williams, ArbEcology.

### ***Project Management and Community Consultation***

The project management and community consultation processes (refer **Appendix 3**) for the Tree Management, Removal and Replacement Strategy were extensive and included:

- Development of Project Brief
  - Identification of potential consultants
  - Selective tender process
  - Appointment of John Patrick as project consultants
  - Establishment of and regular meetings of a Project Control Group consisting of Cr David Mitchell as chair, two community representatives and three council officers. John Patrick and two arborists from the company participated in each meeting
  - Presentation of initial draft report by John Patrick P/L to joint briefing of Council and Project Control Group
  - Information on website, Council Offices and Library as well as newspaper advertisements highlighting the draft Strategy and community consultation processes
  - Correspondence with Victoria Park campers
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- Marking of all trees in the three parks to reflect proposed actions
- On site community information day with consultants present
- Call for public submissions
- Community & Council Forum including presentation from John Patrick P/L consultant and community submissions
- Council presentation at joint meeting of the Point Lonsdale Civic Association and Queenscliffe Community Association
- Two meetings between Mayor Merriman & Cr Butler and concerned citizens to outline a range of tree related issues.
- Ongoing communication with officers at the Department of Sustainability and Environment

### ***Submissions Received***

The draft Tree Management, Removal and Replacement Strategy was exhibited for three weeks from 3 - 24 August 2009 and seventeen (17) submissions were received. These submissions are summarized in **Appendix 4**. Submitters were also given the opportunity to speak to their submission at the Community & Council Forum conducted on Monday 31 August 2009.

The recurring themes in the submissions included:

1. Seeking further information from Council regarding how the Strategy will be funded
2. Various views regarding the future of camping in Victoria Park ranging from excluding campers to continuing use of the park for camping
3. Support for the establishment of Moonah reserves in Victoria Park
4. Support for retaining Monterey Cypress

A number of additional letters directed to Councillors were received that support the findings and recommendations of the ArbEcology report.

## **OVERVIEW OF JOHN PATRICK P/L REPORT FINDINGS & RECOMMENDATIONS**

The report aims to present a 10 year plan that provides direction to the Borough of Queenscliffe for the management, removal and replacement of trees in Princess, Citizens and Victoria Parks, Queenscliff. While the strategy presents findings and recommendations related to the three parks, the issues can be broadly be grouped into those pertinent to Princess and Citizens Parks and those issues that specifically concern Victoria Park. These are discussed in turn.

### ***Princess and Citizens Parks***

The report identifies a range of tree management issues in these parks most notably being risk issues associated with over mature Monterey Cypress and the high use characteristics of the parks. Across the two parks four key actions are recommended:

1. Removal of twenty Monterey Cypress and three Stone Pines with a range of additional management actions such as cabling and bracing and provision of mulched beds;
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2. Identification and preparation of areas for future planting, identification of species, numbers and planting locations resulting in nett increase in tree numbers
3. Management interventions to reduce public risk including examining opportunities to relocate public events to other parks and public open space and introducing temporary exclusion zones during events;
4. Preparation of a park masterplan

### **Victoria Park**

The findings and recommendations for Victoria park are far more complex and wide ranging than the other two parks. This is reflected in the submissions received. Five key actions are recommended:

1. Removal of nine Monterey Cypress and one Stone Pine (for reasons consistent with the findings in the other two parks)
2. Removal (coppicing) of ten Moonah
3. A range of additional management actions such as cabling, bracing and propping of Moonah;
4. Creation of Moonah Reserves (immediately and in future years) and retention of other identified Moonah;
5. Reconfiguration of identified camping sites to accommodate Moonah reserves;
6. Identification and preparation of areas for future planting, identification of species, numbers and planting locations resulting in nett increase in tree numbers;
7. Preparation of a park masterplan

## **OVERVIEW OF ARBECOLOGY REPORT FINDINGS & RECOMMENDATIONS**

Following Council consideration of the John Patrick report Council commissioned an additional 'Quantitative Tree Risk Assessment' report on Princess, Citizens and Victoria Parks from Mr Dave Williams, ArbEcology in order to inform Council of the nature and level of risk management associated with trees in Princess, Citizens and Victoria Parks.

The ArbEcology report utilised a quantitative approach to assess risk management of those trees recommended for removal in the John Patrick P/L report and other selected Moonah trees in Victoria Park identified for significant remedial works. The ArbEcology assessment report only accounted for the risk presented by the tree and not the many other reasons for routine tree removals (tree health, amenity, long term planning) considered in the John Patrick report.

### **Princess and Citizens Parks**

The vast majority of trees assessed in these parks were Monterey Cypress. The ArbEcology report concludes that while these trees *"are of medium risk but are close to the threshold with high risk, it would be a reasonable response to schedule removal of these trees rather than accept the risk over the period where the target potential is at its peak(summer). While only one of these trees would be considered high risk and require immediate action, the remaining trees are generally in poor*

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*condition and are close enough to the threshold where minor changes in weather patterns and/or tree health can affect the probability of failure to an extent where the trees could become a high risk".* These conclusions are generally consistent with the findings and recommendations contained in the John Patrick P/L report.

The ArbEcology report also recommends a range of other interventions consistent with the John Patrick P/L report in terms of creating mulch beds, managing pedestrian activity and re-locating public events and park infrastructure.

### **Victoria Park**

For the most part the trees assessed in Victoria Park were two species, Monterey Cypress and Moonah. The conclusions of the ArbEcology report in relation to the Monterey Cypress were consistent with the findings concerning the Monterey Cypress in Princess and Citizens Parks. In relation to the Moonah trees the ArbEcology report concludes that the majority of these trees were considered of low or very low risk. While the ArbEcology report supports the creation of Moonah reserves in Victoria Park it does not support the removal of the Moonah (one is recommended for removal) in Victoria Park on the basis of risk. This is a clear contrast to the findings and recommendations in the John Patrick P/L report.

While the report indicated that immediate works were not required, the recommendations did not consider the many other reasons for routine tree removals (eg. tree health, amenity and long term planning).

## **RESOLVING CONTRASTING FINDINGS & RECOMMENDATIONS**

Given the divergence of findings and recommendations in the John Patrick P/L and ArbEcology reports, particularly in relation to the management of the Moonah trees in Victoria Park, Council requested legal advice from Mr Warwick Nelson, Harwood Andrews. Legal counsel recommended that John Patrick P/L and ArbEcology be requested to meet together with Council to reconcile differences in the tree and risk management in those instances where contrasting findings and recommendations were reported.

A meeting was conducted with John Patrick and Simon Howe (John Patrick P/L), Dave Williams (ArbEcology) Crs Merriman and Mitchell, Ms Deb Brearley and Mr Tony Cook (Reference Group members) and John Henderson and Lenny Jenner (Council Officers) on 5 October 2009 to determine the specific actions for the trees where contrasting findings and recommendations were identified.

Tree and risk management actions in relation to the identified trees were discussed and agreed. Officers documented these agreed actions in a Summary Report (**Appendix 5**) then distributed this to John Patrick P/L and ArbEcology for confirmation and formal endorsement. The correspondence from John Patrick and Dave Williams confirms the content of this report (**Appendix 6**).

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## DISCUSSION

### Environment and Management of Public Parks

The number and range of uses of the three parks and the failure to address long term tree management issues has resulted in major challenges to address public risk while maintaining the recreation uses and conservation values of the three parks.

The John Patrick P/L report found that a large number of the trees in the parks were in poor condition and structurally unsound and therefore recommended for removal. The majority of trees in this category are over mature Monterey Cypress located across all three parks. The Tree Management, Removal and Replacement Strategy recommends higher levels of tree management, redirecting public events and having more active strategies to direct pedestrian activity in Princess, Citizens and Victoria Parks.

In Victoria Park, a number of indigenous Moonahs were identified as presenting an unacceptable risk and are recommended for removal by coppicing which will enable the tree to reshoot from the stump. The Strategy proposes to create a number of reserves to preserve Moonahs that are structurally unsound but can be safely retained if public access is restricted beneath them and campsites removed. In addition, as an alternative to removal, a significant number of Moonahs are recommended for propping and cabling works.

The lack of attention to tree management and replacement has created the current situation where obvious conflicts exist between tree management and park use, particularly in Victoria Park. A key debate has centred on the role of Victoria Park and the types of activities that should be accommodated. From a planning perspective, the park is zoned 'Public Park and Recreation Zone', the purpose of which is:

- To recognise areas for public recreation and open space;
- To protect and conserve areas of significance where appropriate;
- To provide for commercial uses where appropriate.

The park currently includes passive recreation and caravan and camping on a seasonal basis. The park also boasts a number of trees of conservation value (Moonah) which are protected under the Flora and Fauna Guarantee Act. A number of these uses could be considered to be conflicting.

The Moonah reserves proposed by the strategy are a compromise between providing for public uses such as camping and the preservation of the older Moonahs that are not structurally sound but demonstrate the life cycle of the trees and provide habitat for local birdlife. The Moonah reserves proposed will allow the retention of some trees which would otherwise form an unacceptable risk to the public.

### ***Response from Department of Sustainability & Environment***

Council officers have regularly communicated with DSE regarding the development and outcomes of the Tree Management, Removal and Replacement Strategy. DSE have received and provided comment on the draft report (**Appendix 7**). In summary DSE correspondence:

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- Supports Council's active approach to providing and maintaining tree safety and management
- Supports the recommended actions to address risk and safety issues
- Does not support intrusive arboricultural techniques such as cabling and bracing;
- Supports adoption of Moonah reserves;
- Provides various information relevant to legislative requirements related to management of native vegetation.

### **Risk Management**

The Tree Management, Removal and Replacement Strategy prepared by John Patrick P/L identified significant risks to public safety and this is reflected in the recommendations to remove and manage trees in Princess, Citizens and Victoria Parks.

#### ***ArbEcology Risk Assessment***

Council commissioned an additional 'Quantitative Tree Risk Assessment' report on Princess, Citizens and Victoria Parks prepared by ArbEcology. This report utilised a quantitative approach to assess risk management of those trees recommended for removal in the John Patrick P/L report and other selected Moonah trees in Victoria Park identified for significant remedial works. The ArbEcology assessment only considers the risk presented by the tree and not the many other reasons for routine tree removals (tree health, amenity, long term planning) considered in the John Patrick report.

In summary the key findings and recommendations of this report both support and contrast with findings and recommendation of the John Patrick P/L report. The ArbEcology report confirms the proposed management/removal of the mature Monterey Cypress trees across Princess, Citizens and Victoria Parks. The report also recommends a range of other interventions consistent with the John Patrick P/L report in terms of managing pedestrian activity, re-locating public events and park infrastructure.

While the ArbEcology report supports the creation of Moonah reserves in Victoria Park it does not support the removal of Moonah in Victoria Park (apart from two Moonah trees that are recommended for removal) on the basis of risk. This is a clear contrast to the findings and recommendations in the John Patrick P/L report.

#### ***Harwood Andrews legal advice***

Council have received legal advice on several occasions from Harwood Andrews Lawyers (**Appendix 8**) regarding Council liability in relation to its responsibility concerning tree and risk management.

The initial legal opinion and subsequent phone conversation between Mr Warwick Nelson, Harwood Andrews, Mayor Bob Merriman and Mr Lenny Jenner, CEO, highlighted the responsibility of Council to take action in response to tree management report recommendations. The legal advice indicated that were Council to take no action, the Council would be at risk both in terms of public liability and liability regarding the occupational health and safety of staff.

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At this time the question of members of the public indemnifying Council was also raised with Mr Warwick Nelson. He indicated that while it is possible to request an adult of sound mind to complete a Council indemnification and release, he would regard such an action as very unwise given the difficulty in managing or containing the array of circumstances that might arise in a public camp park.

Following Harwood Andrews review of the ArbEcology report further legal counsel was sought from Warwick Nelson. He concluded that in light of the contrasting recommendations in the John Patrick and ArbEcology reports, particularly in relation to the Moonah trees, it was in Council's best interest to arrange a meeting with both consulting arborists to reconcile the different findings and determine an agreed set of actions for tree and risk management. This meeting was scheduled and agreed actions documented as discussed in this report.

In addition legal counsel recommended that Council implement a range of risk mitigation measures to reduce public risk, including:

***Princess & Citizens Parks***

- Establish mulch beds to reduce pedestrian traffic in areas identified
- Re-locate park infrastructure and gateways away from potential target zone
- Consider alternative locations, where appropriate, for large public events
- Create temporary fencing during public events to limit pedestrian access to target zones
- Annual inspection of trees to identify required tree management actions
- No access signage to garden beds during key events

***Victoria Parks***

- Establish mulch beds to reduce pedestrian traffic in areas identified
- Re-locate park infrastructure and gateways away from potential target zone
- Create temporary fencing during peak camping period to limit pedestrian access to target zones
- Annual inspection of trees to identify required tree management actions
- No access signage to garden beds during camping season
- Establish Moonah reserves
- Produce and distribute information sheets to educate campers on the importance of the Moonah and steps to promote tree health and minimise risk
- Regular surveillance by Park Manager to further educate campers and encourage compliance

***Civic Mutual Plus legal advice***

Council also sought legal advice from Council insurers, Civic Mutual Plus. Mr Michael Beasley encouraged Council officers to clarify the nature and extent of insurance coverage (provided by the Department of Sustainability and Environment) of Council in their role as the Crown land Committee of Management for the three parks.

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### **Response from Department of Sustainability & Environment**

A letter received from Mr Rodney Warren, Acting Director, Public Land Management & Use, Department of Sustainability & Environment, dated 5 October 2009 (**Appendix 9**), states that:

*"DSE public and products liability policy that is held with VMIA covers public and product liability claims on behalf of Committees of Management; and  
There is a large deductible on the policy and DSE agrees to indemnify properly appointed Committees of Management for liability claims that fall below the deductible".*

### **Statutory Requirements**

The recommendations of the two reports will require Council to meet a range of statutory requirements in the process of implementing this strategy.

The removal of any native trees will require a planning permit unless exempted under the emergency works provision of the planning scheme in circumstances where, *'The native vegetation presents an immediate risk of personal injury or damage to property and only that part of vegetation which presents the immediate risk is removed, destroyed or lopped.'*

The trees in Princess and Citizens Parks which are subject to heritage controls are not recommended for removal. There are no trees in Victoria Park that are subject to heritage controls.

In relation to recommended works on Moonahs in Victoria Park, Council must apply for a permit under the *Flora and Fauna Guarantee Act 1988*.

### **Council Plan**

The following strategies from the 2009-2013 Council Plan are relevant to this report:

- 1.2** Responsibly manage financial, human and physical resources.
  - 1.3** Promote strong community engagement and active participation and advocate on issues of importance to the community.
  - 2.1** Work in partnership with the community and other organisations to protect and restore the local environment and promote sustainable practices.
  - 2.7** Protect and restore landscapes and heritage plantings in the Borough.
  - 3.1** Work in partnership with businesses and the community to promote and support business and tourism opportunities, sensitive to the social and environmental amenity of the community.
  - 3.2** Promote seasonal and adventure tourism opportunities.
  - 3.3** Promote the unique natural and heritage attributes of the Borough which will lead to increased local work opportunities.
  - 4.2** Facilitate opportunities in sport, recreation, cultural and civic activities
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- 5.1** Protect, conserve and add value to the unique natural, built and heritage values of the Borough of Queenscliffe, drawing on an understanding of the limitations of the natural environment and the municipality's historical background.

### **Financial Implications**

Most of the Borough's public parks are located on Crown land, and this is true of Princess, Citizens and Victoria Park for which Council is the Committee of Management. The Department of Sustainability and Environment is the custodian/owner of the Crown land.

Substantial revenue is generated for the Borough by the parks both directly and indirectly. For example, Princess and Citizens Parks are located close to the town centre and adjacent to the foreshore. They contribute substantially to the visual amenity and attractiveness of Queenscliff as a tourist destination and community, although this benefit is not easily quantified. The parks are also frequently utilized for community events, markets and festivals.

The largest income produced by the three parks is generated by camping at Victoria Park, at approximately \$220,000 per year. This income is returned to the Crown Land Reserves fund and contributes to maintenance, revegetation and improvements to the coastal Crown land.

The agreed actions in year one propose to remove three campsites to provide for Moonah reserves and reduce public risks. Those reserves must be created prior to the camping season in summer 2009/10. The loss of 3 sites will mean an estimated loss of \$7,500 (approximately \$2500 per site) in income in this financial year, although possible alternative sites are being investigated for those people who have pre-booked a site and will be displaced.

In addition to this loss of income, the cost of the implementation of the agreed actions is substantial, with 37 trees to be removed in Year One, remedial works on other trees to be undertaken, replacement plantings to occur, provision of mulched beds, re-location of park infrastructure, creation and installation of signage and use of temporary fencing. Total cost of Year One has been estimated by the consultants to be \$300,000 (Council officers have reviewed the revised scope of works and estimated the cost in year one at approximately \$180,000).

Council will need to identify alternative sources of income to implement this project and/or reallocate funds from existing capital works/new initiatives in the 2009/10 Council Plan. One option may be to defer the purchase of the Recreation Reserve cabin (\$85,000) to future years. Council's 2009/10 budget currently includes a \$50,000 allocation for implementation of this Strategy. Council officers have investigated State Government funding options and outcomes are likely to be known by the end of October 2009.

### **Social Benefits**

Princess, Citizens and Victoria Parks are of significant value to the Queenscliff community for reasons of amenity, landscape, sense of place and recreation. The parks contribute to the economic and social wellbeing of the community. Victoria Park is valued by some residents as a

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botanical garden (although not gazetted as such) and contains indigenous species (Moonah) of high environmental value.

The agreed actions seek to address the identified public risks while at the same time limiting the impact on the above values by keeping to a minimum the number of trees to be removed. In addition remedial actions to address identified public risk issues, creation of Moonah reserves at Victoria Park and introduction of other public park management techniques will be applied. Some nominated trees will be retained and/or managed in a way to provide bird habitat and food source over the next 12 months.

The value of camping at Victoria Park also needs to be recognised given the role the park plays in connecting families and building social networks.

## **CONCLUSIONS**

The Borough of Queenscliffe has undertaken several arboricultural and landscape assessments of Princess, Citizens and Victoria Parks in Queenscliff dating back as far as 1985. The vast majority of recommended actions identified in these reports remain outstanding and as a result public safety has become a matter of urgency in all three Parks, most clearly illustrated in the number of incidents of tree failure of the past 12 months.

Council recently commissioned two arborist reports (John Patrick P/L and ArbEcology) that recommend tree and risk management actions for the period prior to the summer tourist season. The findings and recommendations of the two reports are consistent in relation to the proposed management and removal of the mature Monterey Cypress trees across Princess, Citizens and Victoria Parks. The reports are complementary in terms of a range of other interventions such as managing pedestrian activity, re-locating public events and park infrastructure, creating mulched beds and installing signage and temporary fencing.

While the ArbEcology report supports the creation of Moonah reserves in Victoria Park it does not support the removal of Moonah in Victoria Park (apart from two Moonah trees that are recommended for removal) on the basis of risk. This is a clear contrast to the findings and recommendations in the John Patrick P/L report.

Legal counsel recommended that Council take the initiative in seeking both consulting arborists to discuss and reconcile their respective tree and risk management findings and recommendations. This has resulted in the development and confirmation of the agreed actions across Princess, Citizens and Victoria Parks that is presented in this report. The proposed program of actions presents a clear way forward that commits Council to its stated objective to achieve a nett increase in the number of trees.

The costs associated with implementing the Strategy will present a significant challenge for Council in 2009/10 and beyond. Attention will need to be given to sourcing funds from State Government and reviewing Council's budget to identify opportunities to redirect existing budget allocations in 2009/10. Consideration will also need to be given to ongoing tree management in formulating future budgets

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The agreed actions provide Council with a means to address the legacy that has resulted from years of inaction while at the same time presenting the opportunity to implement a plan that will create a positive legacy for future generations.

**Councillors: Mitchell/Butler**

**That Council**

- (1) Note the Tree Management, Removal and Replacement Strategy for Princess, Citizens and Victoria Parks report (September 2009) prepared by John Patrick P/L and the Borough of Queenscliffe Quantified Tree Risk Assessment - Selected trees in Princess, Citizens and Victoria Parks, Queenscliff report (25 September 2009) prepared by Mr Dave Williams, ArbEcology;**
- (2) Endorse and immediately implement the Summary Report of agreed actions between John Patrick P/L and ArbEcology, including creation of Moonah reserves in Victoria Park subject to withdrawing trees number 155, 156, 165 & 166 in Citizens Park and tree number 107 in Victoria Park from the Summary Report of Agreed Actions (Appendix 5) and to seek further advice from John Patrick P/L and ArbEcology including revised tree risk assessment as a consequence of additional mitigation measures;**
- (3) Undertake extensive replanting consistent with the future parks masterplan to achieve a nett increase in the number of trees in the three parks in each year;**
- (4) Establish a park revegetation reference committee to provide advice and support the replanting program consistent with the John Patrick report, the 1985 report and any other relevant report and guide the parks masterplanning process;**
- (5) Review 2009/10 budget to identify opportunities to re-allocate funds to implement the Summary Report;**
- (6) Pursue State Government funding opportunities to implement the Summary Report;**
- (7) Implement the range of risk mitigation measures recommended by Warwick Nelson, Harwood Andrews;**
- (8) Identify affected campsites in 2009/10 and seek to find alternative arrangements for those impacted;**
- (9) Develop and implement an Action Plan for addressing affected campsites beyond year one;**
- (10) Identify funding opportunities and progress a masterplan for Princess, Citizens and Victoria Parks;**
- (11) Ensure that Council's long term financial plan and all future budgets include appropriate allocation of funds for ongoing tree management.**

**Carried Unanimously**

**5. CLOSE OF MEETING**

7:38pm