

CAP Meeting Agenda

Presiding Member: Mr Brenton Burman

I write to advise of the Council Assessment Panel Meeting to be held on Wednesday 29 January 2025 at 6:00pm in the Unley Council Chambers, 181 Unley Road Unley.



Tim Bourner
Assessment Manager

Dated: 16/01/2025

Members: Mr Brenton Burman, Ms Colleen Dunn, Mr Terry Sutcliffe, Mr Will Gormly, Professor Mads Gaardboe (Deputy)

KAURNA ACKNOWLEDGEMENT

Ngadlurlu tampinhi, ngadlu Kurna yartangka inparrinhi. Ngadlurlu parnuku tuwila yartangka tampinhi.

*Ngadlurlu Kurna Miyurna yaitya yarta-mathanya Wama Tarntanyaku tampinhi. Parnuku yaitya, parnuku tapa purruna yalarra puru purruna.**

We would like to acknowledge this land that we meet on today is the Traditional Lands for the Kurna people and that we respect their spiritual relationship with their Country.

We also acknowledge the Kurna people as the Traditional Custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kurna people today.

*Kurna Translation provided by Kurna Warra Karrpanthi

AGENDA

Item No		Page
1.	Apologies	2-2
2.	Conflict of Interest	2-2
3.	Confirmation of the Minutes	2-2
4.	Planning, Development Infrastructure Act Applications	
4.1	Nil	-
5.	Appeals Against Decision of Assessment Manager	
5.1	5 Regent Street, Millswood SA 5034 - 24033919	3-81
6.	Applications Before the ERD Court	
6.1	Summary of ERD Court Appeals	82-82
7.	ERD Court Compromise Reports - CONFIDENTIAL	
7.1	Motion to move into confidence	-
	Nil	-
	Motion to move out of confidence	-
	Nil	
8.	Council Reports	
8.1	Nil	-
9.	Other Business	
9.1	Nil	-

ITEM 5.1

DEVELOPMENT APPLICATION – 24033919 – 5 REGENT STREET, MILLSWOOD

DEVELOPMENT NUMBER:	24033919
APPLICANT:	Alice Adamson
ADDRESS:	5 REGENT STREET MILLSWOOD SA 5034
NATURE OF DEVELOPMENT:	Carport
RELEVANT AUTHORITY:	Council Assessment Panel
CATEGORY OF DEVELOPMENT:	Review of a Decision by the Assessment Manager (Code Assessed – Performance Assessed)
RECOMMENDING OFFICER:	Assessment Manager
ATTACHMENTS:	Attachment 1: Application plans and reports (including a report from Tertiary Tree Consulting Pty Ltd) Attachment 2: Delegated assessment report Attachment 3: Council’s consultant arborist report Attachment 4: Decision notification form Attachment 5: Application for review and accompanying letter Attachment 6: Delegated assessment report – DA 23030316 Attachment 7: Pruning recommendation and correspondence – DA 23030316

REQUEST FOR REVIEW

Decision to be Reviewed

An application for the construction of a carport at 5 Regent Street, Millswood was refused under the delegated authority of the Assessment Manager.

The application was determined within the statutory timeframes. The request to review the decision was received in accordance with the Panel’s policy for such matters.

Background:

The applicant’s primary concern is the presence of a Significant *Eucalyptus camaldulensis* (River Red Gum) which is sited in the front yard on the adjoining land to the north (3 Regent Street, Millswood). The tree abuts the boundary between the two allotments and its canopy overhangs the applicant’s land.

In November 2023, the applicant lodged a pruning application (DA 23030316) for the tree arguing it poses an unacceptable risk to persons and property. This application was assessed and refused by Council. The assessing officer refused the application on the grounds that:

The proposed pruning is considered to likely adversely impact the aesthetic appearance and structural integrity of the tree and does not satisfy with Regulated and Significant Tree Overlay assessment Provision PO 1.3 (a) vi.

During the assessment the proposal was referred to Council’s consultant arborist who did not support the extent of proposed pruning and provided an alternative pruning plan. This plan was forwarded to the applicant, but no response was received. The owners of the tree supported the alternative pruning plan. The assessment details can be found in Attachment 6 and 7.

In April 2024, the applicant then lodged an application (DA 24009737) for the construction of a carport. This was refused under the Assessment Manager’s delegations and the applicant appealed the decision the Environment, Resources and Development Court. The matter was adjourned to enable a revised proposal to be lodged with Council. This revised application (DA 24033919) is the subject of this review.

ITEM 5.1

DEVELOPMENT APPLICATION – 24033919 – 5 REGENT STREET, MILLSWOOD

Description of the Development:

The proposal sought the construction of a combined carport and entry canopy attached to the façade of an existing single storey dwelling.

It was proposed to have a total height of 3.1m, a width of 9m, and an area of 50m². The structure was to be setback 0.43m from the northern (side) boundary and setback 1.1m from the primary street frontage.

Refusal reasons:

The application was refused on the following grounds:

- The proposed combined carport and canopy is sited forward of the building line and would be the visually dominant feature of the dwelling, failing PO 4.2 of the Historic Area Overlay and PO 10.1 of the Established Neighbourhood Zone.
- The proposed combined carport and canopy has an insufficient setback from the primary street and is not in keeping with the character of the locality, failing PO 1.1 and PO 4.1 of the Historic Area Overlay; PO 11.1 of the Established Neighbourhood Zone; and PO 20.1 of Design in Urban Areas.

Reason for Review

The applicant has lodged a Request for the Council Assessment Panel (CAP) to review the decision of the Assessment Manager in accordance with provisions of the Planning, Development, and Infrastructure (PDI) Act and adopted policies of the CAP.

A letter has been provided (Attachment 5) detailing the reasons for the review which are summarised as:

Planning Consent should have been granted in respect of DA 24033919 having regard to all of the relevant provisions in the Planning and Design Code

A supporting letter has been submitted in conjunction with the Request for Review.

The applicant has nominated to be heard by the Panel in support of this review.

DISCUSSION

Assessment Considerations

The application was assessed against the relevant criteria as set out in the Planning and Design Code.

The performance outcomes are discussed in the Assessment Report (Attachment 2) with the relevant provisions of the Code are found in the below link:

[Planning and Design Code Extract](#)

The applicant provided a planning report from Phil Brunning & Associates, a letter from Hilditch Lawyers, and a Tree Impact Report from Dean Nicole.

As with the assessment of the first application, the proposal was found to fail relevant provisions of the **Historic Area Overlay** and **Established Neighbourhood Zone**. This was informed by a detailed assessment of the locality. Ancillary structures are explicitly sought to be located behind the building line of dwellings, and furthermore the locality was not characterised by such structures.

The revised approach from the applicant included a Tree Impact Report from Dean Nicole. Dr Nicole was supportive of the removal of the tree, but if this was not agreed to by the tree owners, he was supportive of the periodic re-logging of the trees epicormic growth, or a protective structure to mitigate risk.

The applicant argued that the periodic lopping is impractical due to the issues of gaining the tree owners consent, the need to lodge a DA every time lopping was required, and the effect the lopping would have on the amenity value of the tree. It was therefore argued that the only available option to the landowner is to erect a carport to protect the area under the tree from branch failure.

ITEM 5.1

DEVELOPMENT APPLICATION – 24033919 – 5 REGENT STREET, MILLSWOOD

Whilst tree damaging activity was not proposed as part of the application, the argument put forward by the applicant was that tree-damaging activity was required, but impractical. Therefore, the provisions in the **Regulated and Significant Tree Overlay** were used to determine if the premise of the argument was sound.

The application was referred to Council's consultant arborist who disagreed with the opinion of Dr Nicole and advised that a suitable pruning plan is available to address defects in the crown of the tree – a plan that had been provided in the original pruning application and agreed to by the owners of the tree (Attachment 7). A reasonable measure is therefore available to reduce the risk to public or private safety to acceptable levels without the requirement to erect a protective structure in the form of a carport.

DETERMINATION

The Council Assessment Panel confirms that pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken a review of the decision of the Assessment Manager, the application is NOT seriously at variance with the provisions of the Planning and Design Code

and resolves to:

(a) **affirm** the decision of the Assessment Manager for DA 24033919 to refuse the application for the reasons set out in the Assessment Manager's decision.

or

(b) **vary** the decision of the Assessment Manager for DA 24033919, in a manner to be determined by the Panel.

or

(c) **set aside** the decision of the Assessment Manager to refuse Development Approval for DA 24033919 and replace with an alternate decision.

ATTACHMENT 1



PROPOSED CARPORT

5 Regent Street, Millswood, SA, Karna Country

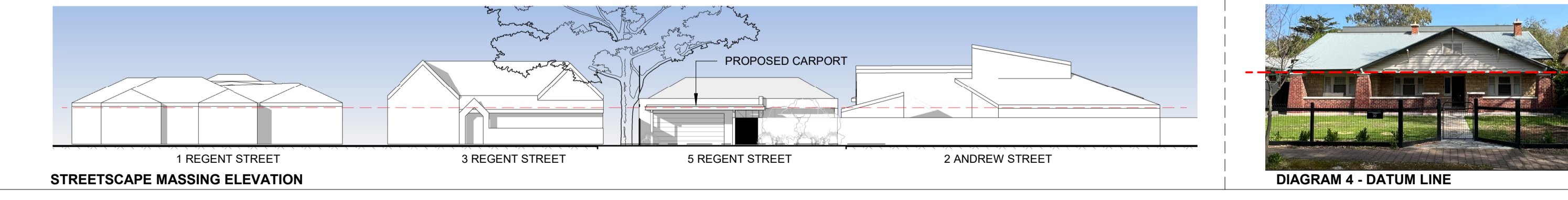
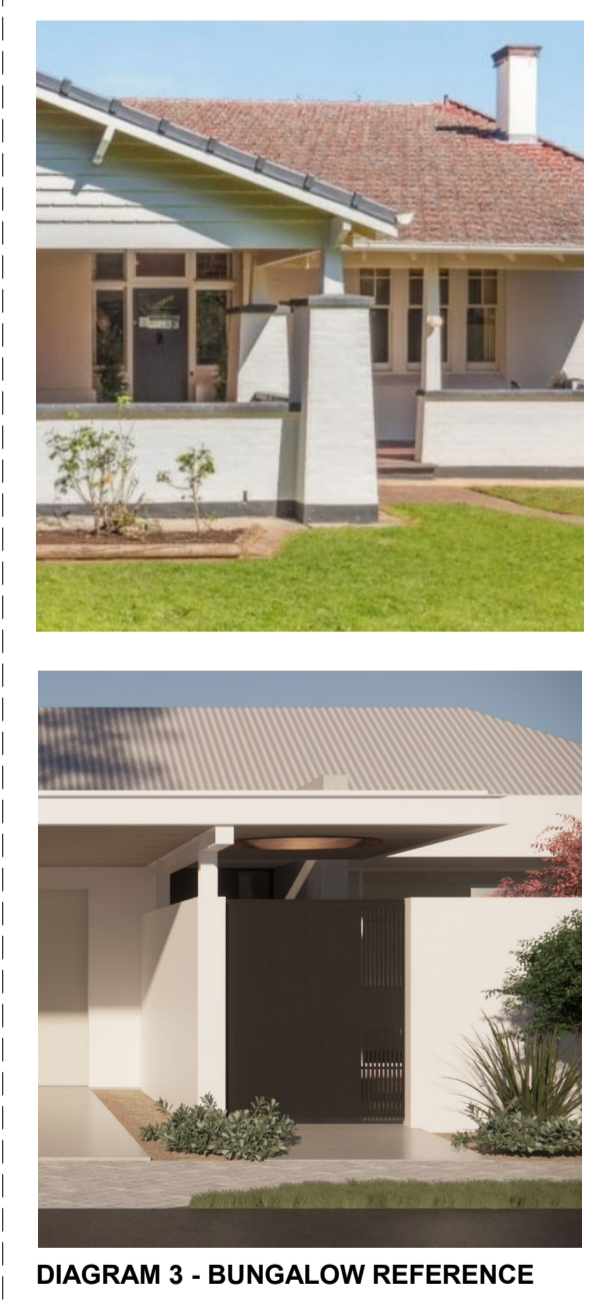
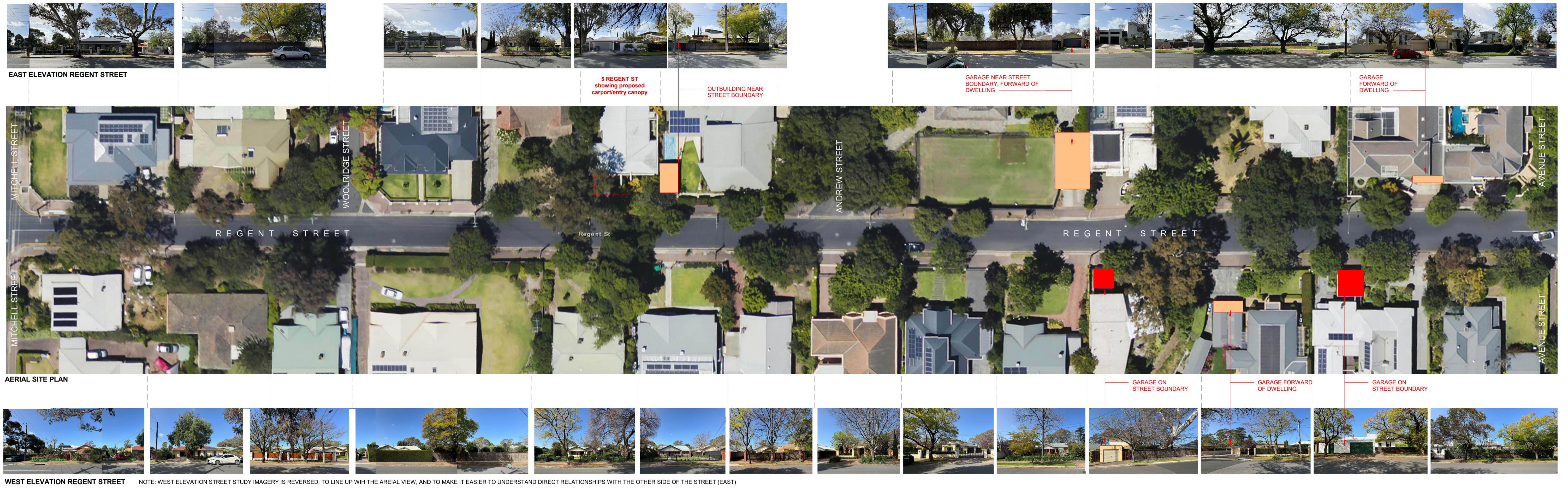
For: Alice Adamson & Rahul Mukherjee

e: ben@mountfordwilliamson.com.au t:0413 300 066
 e: martin@mountfordwilliamson.com.au t:0408 314 706
 a: L1/1 Boskenna Avenue Norwood SA 5067

mountfordwilliamsonarchitecture

Sheet List - Carport	
Sheet Number	Sheet Name
CP-00	COVER PAGE
CP-01	STREETSCAPE DESIGN APPROACH &
CP-02	DRAWINGS - AS SHOWN

STREETSCAPE ANALYSIS



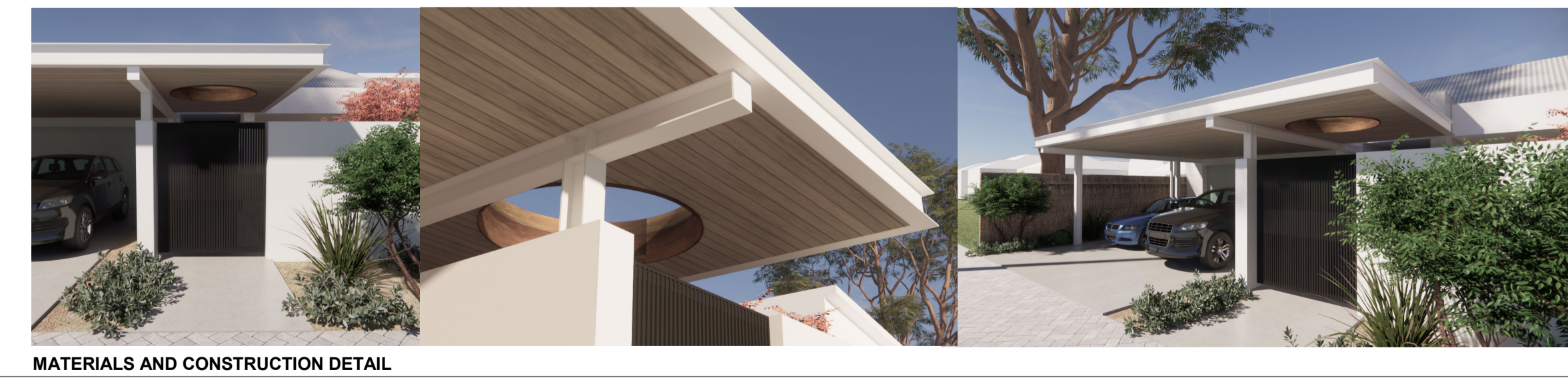
DESIGN APPROACH

The proposed carport has been designed as a thin, horizontal floating roof that hovers over the driveway to protect occupants and cars, as well as providing cover to the front door and enhancing the street entry to the house.

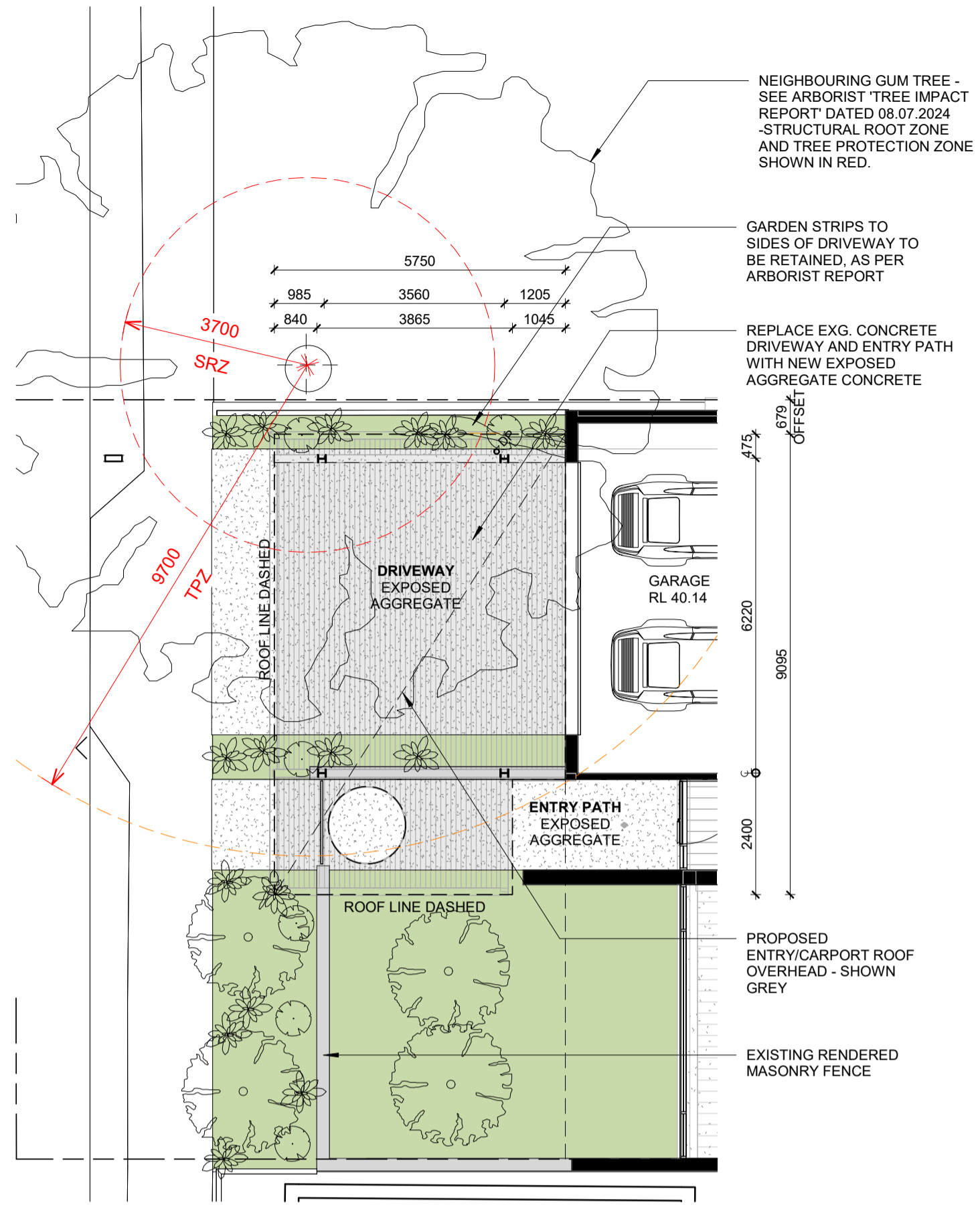
The design is contemporary in its nature, relating to the existing dwelling that was built on the site in the early 2000's. At the same time, the design also takes into consideration the existing streetscape form and character. This is done in several ways:

- Datum line consistency:** The floating roof of the carport picks up on the strong 'datum line' created by other verandahs and eaves on homes along the street. This datum line generally runs at a height of between around 2.4m - 2.7m. Diagram 4 'Datum Line' references this through the example of the homes on the opposite side of the street. This datum line is delineated by the long spans of beams that support their verandah roofs above, and this line is further emphasised by the deep shading underneath.
- Bungalow Reference:** Elements of the proposed carport roof support structure can be seen as a contemporary interpretation of the verandahs of classic 'Californian Bungalow' homes that characterise the Millswood area. Their verandahs are typically made up of a heavy base or plinth, with some element of thin column above this, which then supports exposed beams - the ends of which point out to the street in an honest expression of structure. In the carport proposal, the existing masonry fence can be seen as the 'plinth' or heavy base, above which there are thinner columns supporting exposed beams in a similar way to the old Bungalows. This is seen in diagram 3 - 'Bungalow Reference'.
- Minimising visual bulk:** The roof has been designed to be as thin as possible - minimising any bulky form beyond the front of the main house, and allowing the form of the main house to maintain its presence and position in the overall streetscape. See Diagram 1 'before' and 'after'.
- Maintaining sightlines and sense of open space:** The carport is open on all sides and columns are set back from the front edge, which gives clear visibility through and past the structure, maintaining continuous lines of sight from street level to beyond the site, maintaining the existing sense of streetscape space and form. See Diagram 2 'street view'.

The proposed carport will be constructed with high quality materials and finishes, with considered detailing and crafted connections and junctions. Gutters, downpipes and other utilitarian elements will be concealed. The ceiling will be timber lined, with an inset aged bronze circular sun void at the entry. These elements will bring warmth and texture to the underside of the floating roof, and create a welcoming entry to the home from the street.

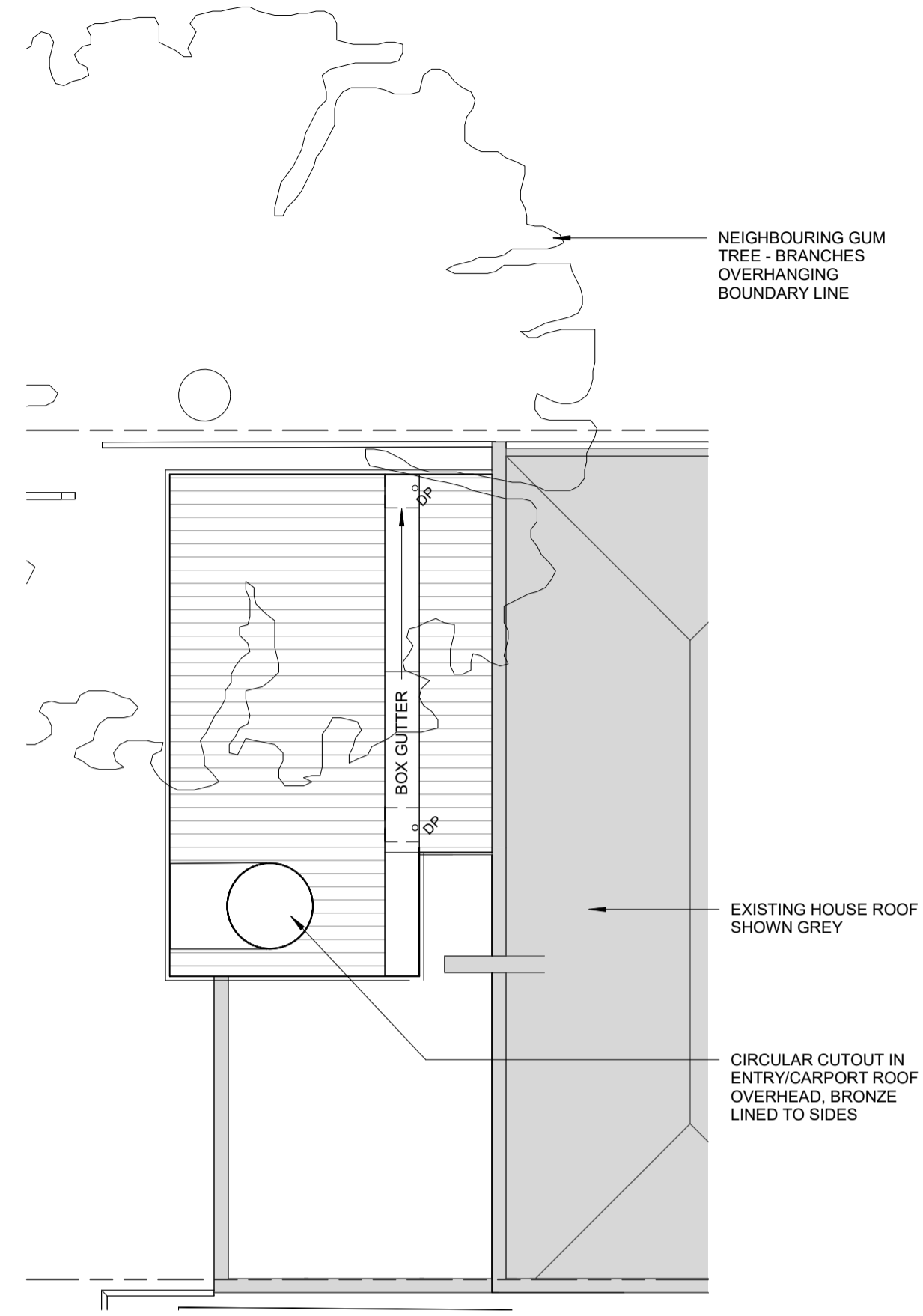


<p>Notes: The Contractor shall verify all dimensions and details on site prior to commencement of any work. Any discrepancies are to be reported to the Architect immediately. Copyright. All rights reserved. This work remains the property of the Architect. No part of this work can be copied (in whole or in part) without the written authorisation of the Architect.</p>	<p>Revision Schedule</p> <table border="1"> <thead> <tr> <th>Revision</th> <th>Description</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		Revision	Description	Date				<p>CLIENT DETAILS</p> <p>Alice Adamson & Rahul Mukherjee</p>		<p>PROJECT No.</p> <p>2305</p>	<p>DATE</p> <p>05/09/2024</p>	<p>SCALE</p> <p>As indicated</p>	<p>SHEET</p> <p>A1</p>	<p>DRAWN: Author</p> <p>CHECKED: Checker</p>	<p>mountford williamson architecture</p> <p>CP-01</p> <p>e: martin@mountfordwilliamson.com.au 0408 314 706 e: ben@mountfordwilliamson.com.au 0413 300 066 L1/1 Boskenna Avenue, Norwood 5067</p>	
	Revision	Description	Date														
<p>PROJECT</p> <p>PROPOSED CARPORT</p>			<p>PROJECT ADDRESS</p> <p>5 Regent Street, Millswood, SA, Kaurna Country</p>		<p>DRAWING TITLE</p> <p>STREETSCAPE & DESIGN APPROACH</p>		<p>DRAWING No.</p> <p>CP-01</p>		<p>8</p>								



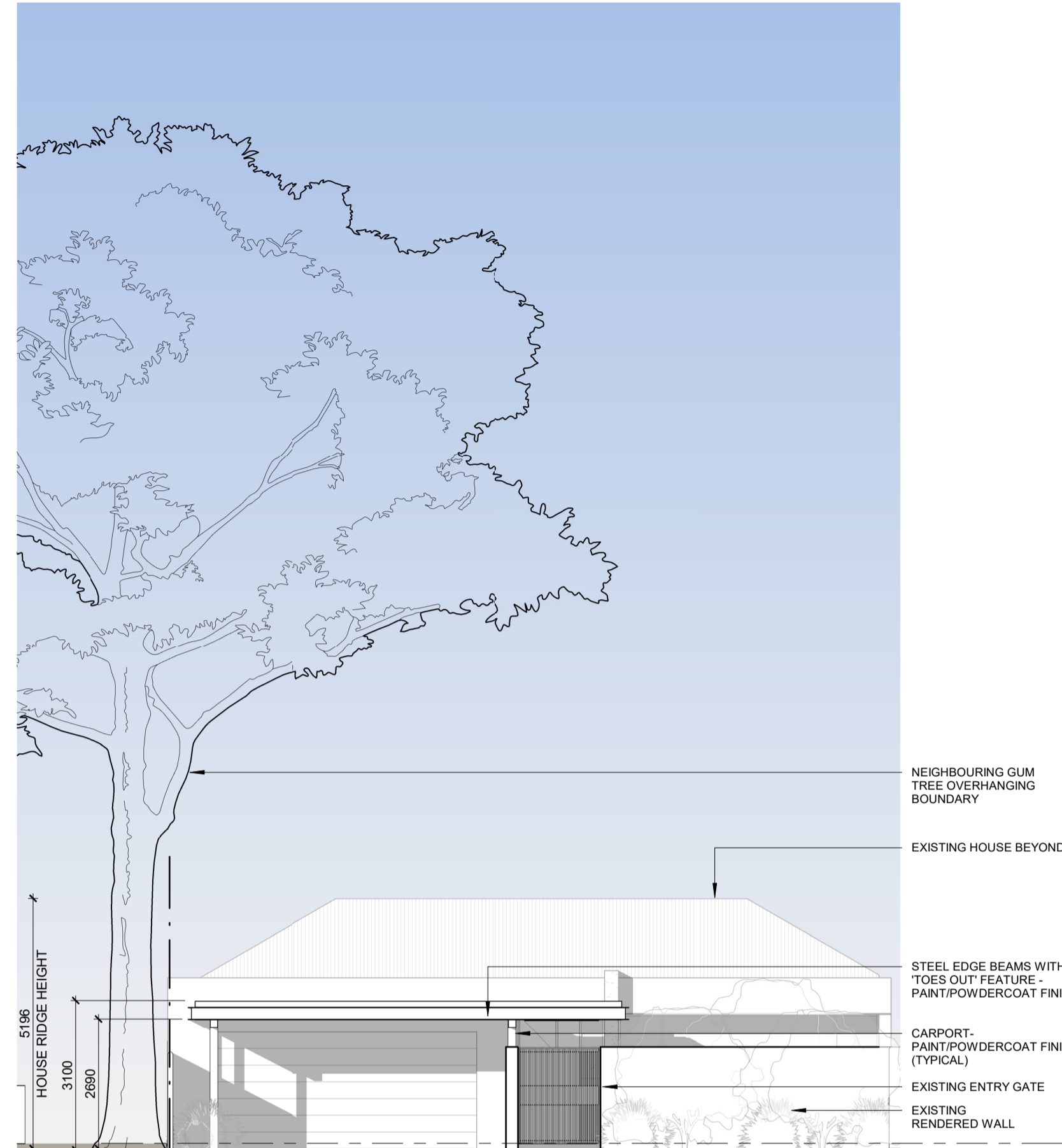
FLOOR PLAN

1 : 100



ROOF PLAN - CARPORT

1 : 100

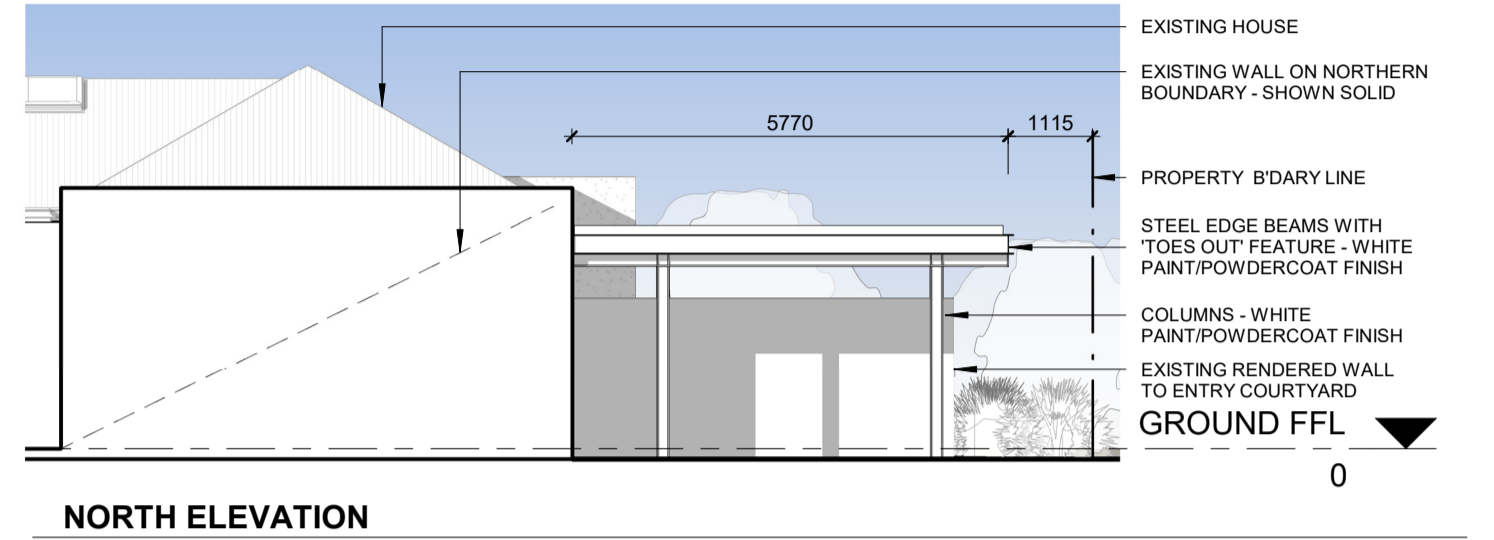


WEST ELEVATION

1 : 100

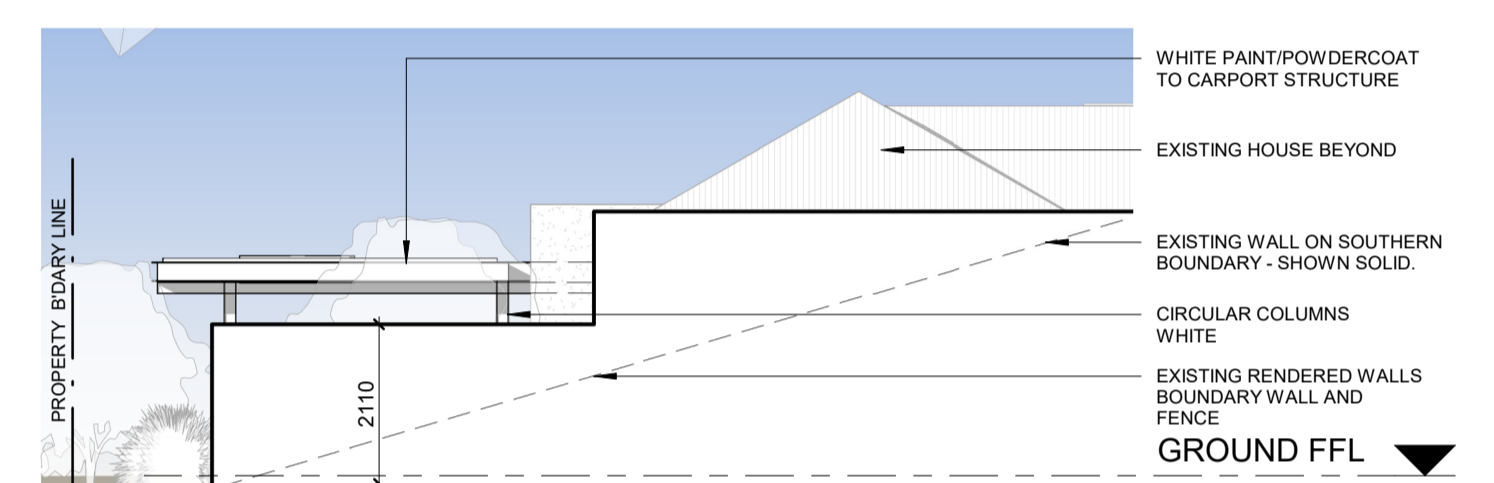
MATERIAL LEGEND

	WHITE CAPPINGS/ROOF SHEET TO CARPORT		TIMBER SOFFIT LINING
	WHITE PAINT/POWDERCOAT FINISH TO CARPORT		AGED BRASS OPENING IN ROOF



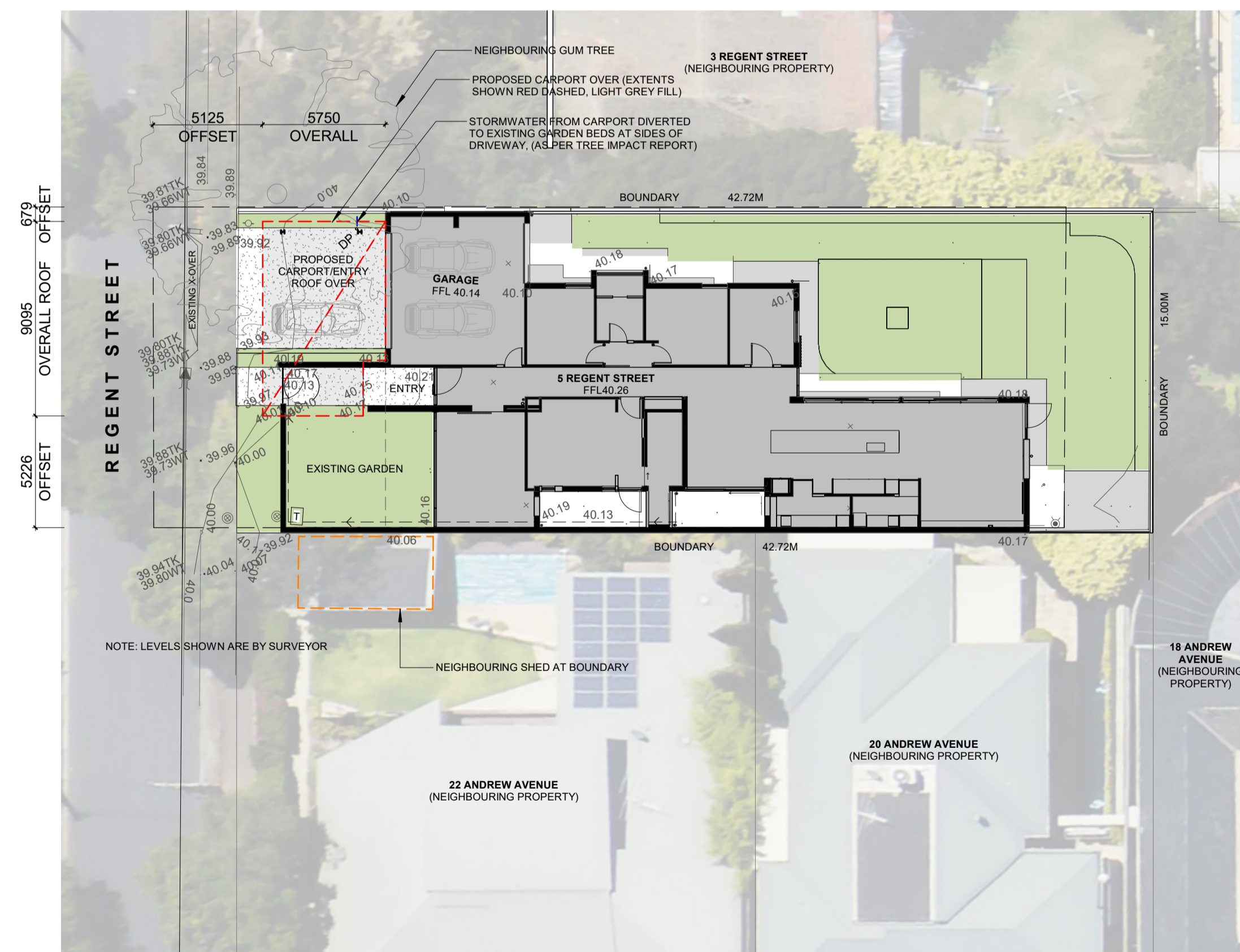
NORTH ELEVATION

1 : 100



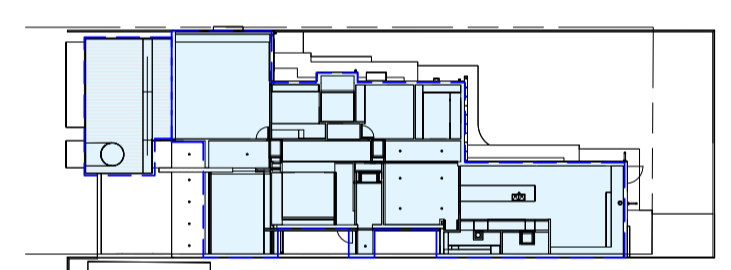
SOUTH ELEVATION

1 : 100

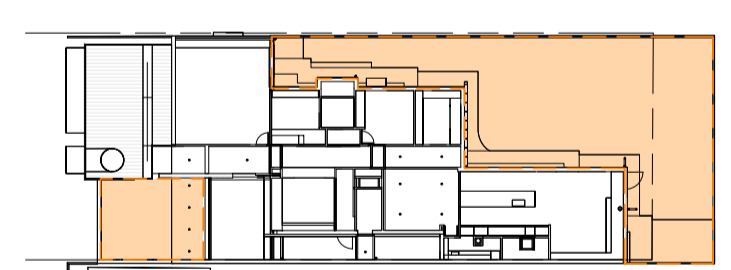


SITE PLAN

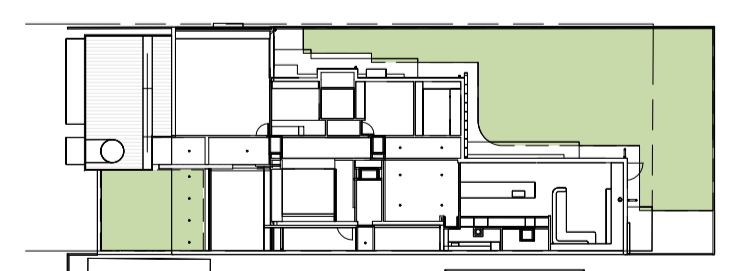
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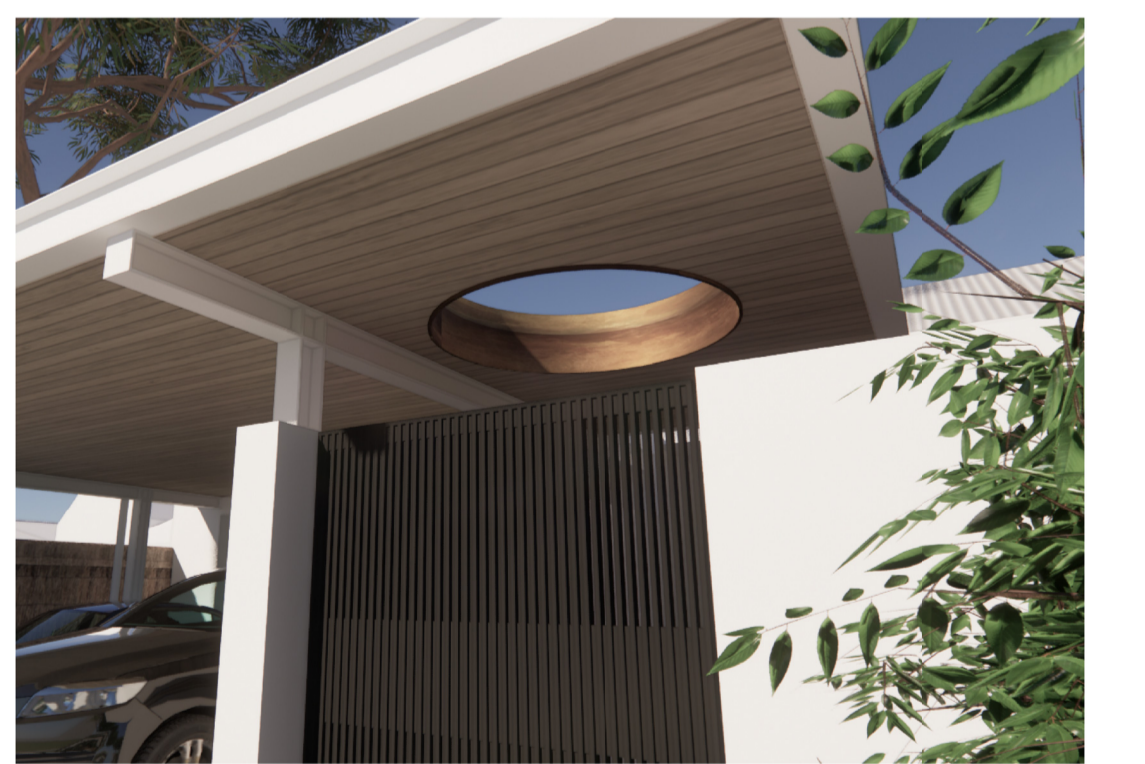
SITE COVERAGE	
EXISTING ROOF	282m ²
PROPOSED CARPORT	50 m ²
TOTAL	332m²
SITE AREA	641m²
SITE COVERAGE	51.8%



PRIVATE OPEN SPACE	
FRONT YARD	36.3m ²
BACK YARD	221m ²
TOTAL (POS)	257.3m²



SOFT LANDSCAPING	
FRONT YARD	37m ²
BACK YARD	165m ²
TOTAL	202m²
SITE AREA	641m²
SOFT LANDSCAPING	31.5%



Notes:
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Revision Schedule

Revision	Description	Date

CLIENT DETAILS
Alice Adamson & Rahul Mukherjee

PROJECT No. 2305
PROJECT ADDRESS 5 Regent Street, Millswood, SA, Kaurna Country

DATE 05/09/2024
SCALE As indicated
SHEET A1
DRAWN: Author
CHECKED: Checker
DRAWING No. CP-02

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CP-02

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9

Structural Assessment Letter

Date: 19th September 2024

Job Number: 2311119

Client: Alice and Rahul

Site: 5 Regent Street, Millswood

5 Regent Street, Millswood – Proposed Car Port

The owners at 5 Regent Street, Millswood through Mountford Williamson Architecture have proposed an alternative car port design to provide better protection to vehicles and users of said space. The location of the car port is adjacent to a large gum tree with extensive foliage/ tree structure hanging over the boundary and positioned on top of proposed car port.

In efforts to provide greater safety to occupants using the car port and vehicles we (GAMA Consulting) have proposed a structural design utilising heavier and stronger steel members, carefully designed connections and beam arrangements to minimise potential structural failure in the event of a tree branch/ limb was to fall on top of the car port.

The structural design utilises heavier Universal Columns as beams and rafters cantilevered over Universal Columns to provide structural connection redundancy and greater durability to withstand vertical impact loads. Additionally, cleat connections have not been used intentionally to eliminate bolt-cleat failure under heavy impact loads.

The footings to support the steel frame structure would consist of concrete bored piers of minimal diameter but appropriate depth to provide footing support to the four steel support columns. Use of bored piers would allow appropriate support of super structure within the given geotechnical properties whilst limiting impacting to the tree root zone. Where foundation is to be excavated within 3.7m of the significant tree (structural root zone) a non-invasive excavation method will be required to reduce impacts to the root system.

Whilst the proposed design will not eliminate potential damage / failure of car port structure under significant impact load (tree branch falling) it would provide greater protection and improved safety in comparison to a thinner steel framed or timber framed structure.

The structure also provides greater protection to the existing garage and dwelling from falling tree branches, debris and alike. In comparison to a thinner / sleeker car port design, the proposed 'heavier' steel framed car port provides a first point of contact to a potential falling branch in lieu of a direct hit to the garage and dwelling without the construction of the steel framed car port. Effectively

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reducing impact forces from landing directly on the existing structures. Whereas a thinner / sleeker car port design would provide substantially less protection to the existing garage and dwelling.

In order reduce the impact to the existing structure whilst still providing adequate irrigation to the significant tree, where possible downpipes should discharge as far as possible and directed away from the existing structure into the proposed garden beds in order to best reduce the possibility of differential movement as a result of soil heave.

Please do not hesitate to contact the below signed if you require further information.

Yours Faithfully,



Hamish Bills - gama consulting pty ltd
Director



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25 September 2024

Mr N Bolton
Planning Officer
City of Unley
PO Box 1
Unley SA 5061

DRAFT

Dear Nicholas

5 Regent Street, Millswood

I confirm I act for Alice Adamson and Rahul Mukherjee who are the owners and occupiers of the dwelling at the above address.

As you will be aware, Ms Adamson has filed an appeal in the ERD Court in response to the refusal of DA 24009737 (ERD-24-000054). The conference in that appeal has been adjourned to Monday 21 October 2024 at 2.15pm.

My clients have now arranged for a fresh development application to be prepared. This application comprises fresh plans and documentation including a report from Dr Dean Nicolle (arborist) and an engineering report in relation to the proposed new carport. I have been instructed to outline my clients' position in respect of this fresh DA.

I am instructed that the position is as follows:

1. A significant tree, more particularly a River Red Gum, is located in the front yard of the adjoining land at 3 Regent Street, Millswood.
2. Dr Dean Nicolle has inspected the tree and his opinion (which is included with the fresh DA) can be summarised as follows:
 - 2.1. The tree is in poor condition. Its trunk and primary leaders were all lopped at 5 to 6 metres above ground level many years ago (presumably by a utilities company to provide clearance to overhead electrical conductors).

Liability limited by a scheme approved under Professional Standards Legislation.

Hilditch Lawyers Pty Ltd ACN 145 516 276

- 2.2. The regrowth that has resulted comprises large, heavy, extended and weakly-attached leaders. This regrowth presents a moderate to high, unacceptable and gradually increasing risk of failure at the points of origin. They have a significantly increased likelihood of structural failure at their points of origin due to their inherently weak attachment.
 - 2.3. The “target area” of the tree extends for a radius of some 23 metres and extends well beyond my clients’ driveway and front pedestrian path.
 - 2.4. Dr Nicolle is supportive of whole tree removal or periodic lopping (to completely remove the canopy and leaders) to address the risk to safety.
3. Unfortunately, neither the Council nor my clients’ neighbours are supportive of whole tree removal. Furthermore, the option of ongoing periodic re-logging as per Dr Nicolle’s advice (that is, lopping back to its previous lopping points at 5 to 6 metres above ground level) would, on each occasion, destroy the aesthetic qualities of the tree and my clients very much doubt that the Council would see sense in that approach or that it would be supported by the neighbours (a fresh DA would need to be lodged and approved each time lopping is required). The tree obviously cannot be lopped or removed without the approval of both the Council and the neighbours.
 4. At the same time, it is unacceptable for my clients to live with the obvious ongoing risk presented by the tree having regard to the opinion of Dr Nicolle. They obviously cannot implement an exclusion zone within the target zone as their only driveway to their only garage runs through that Zone and so does the path from their front pedestrian gate to their front door. The target zone is of course under regular use and is critical to the functionality of the dwelling. Vehicles and pedestrians pass through it multiple times each day.
 5. This brings my clients to PO 1.3(b) for the Regulated and Significant Tree Overlay (within which the tree is located) which provides that *“in relation to a significant tree, tree-damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective”*.
 6. My clients are faced with implementing the only practical solution which arises as an alternative to tree-damaging activity, which is to construct an under-canopy structure over the driveway and pedestrian path which still facilitates movement of vehicles across the driveway and pedestrians to the front door. The structure which is proposed, quite logically, takes the form of a carport which has been engineered to minimise the potential of structural failure in the event it is hit by a falling branch.

7. The carport has been architecturally designed to a very high standard and compares favourably with the design of existing structures at 20 Regent Street and 24 Regent Street by way of example. It integrates logically with the dwelling and also affords protection to pedestrians using the path between the front pedestrian gate and the front door.
8. The benefit of a protective structure in the form of a carport is that it has a low profile which can comfortably extend from the garage and dwelling out towards the western property boundary whilst providing adequate clearance for vehicles and pedestrians without appearing as a contrived structure without any obvious purpose.
9. I would respectfully suggest that the importance of addressing the unacceptable risks presented by limb drop (which is clearly a relevant consideration under the Code) outweigh any concerns which might arise in respect of the visual impact of the proposed protective structure on the streetscape (particularly in a streetscape which already comprises garaging on the road boundary at other properties in the locality). This outcome will enable the tree to be retained whilst the risks it presents are managed in the best and most sensible way possible.

Please contact me if you have any queries.

Yours Faithfully,

James Hilditch

james@hilditchlawyers.com

27 September 2024

Mr Nicholas Bolton
Planning Officer
City of Unley
PO Box 1
UNLEY SA 5061



Town Planning
Development Advice
Strategic Management

Dear Nicholas,

**DEVELOPMENT APPLICATION – ALICE ADAMSON & RAHUL MUKHERJEE -
UNDER CANOPY STRUCTURE IN THE FORM OF A CARPORT – 5 REGENT
STREET, MILLSWOOD**

I refer to the development application by Alice Adamson and Rahul Mukherjee that seeks planning consent for the construction of a carport structure on land at 5 Regent Street Millswood to provide protection to vehicles and pedestrians moving and parking beneath the canopy of a large River Red Gum tree which has a trunk wholly located on land adjoining at 3 Regent Street.

I am engaged to provide my town planning opinion in relation to this proposal.

1. Background

As you will be aware, a previous development application (24009737) for a similar structure was refused planning consent on 3 May 2024 for reasons including that it would be the visually dominant feature of the dwelling, and that the setback provided to the street frontage would be insufficient.

I understand that this decision is currently under appeal to the Environment Resources & Development Court, with the adjourned conference between parties scheduled to resume on 21 October 2024. As foreshadowed, this fresh application has been lodged with the benefit of additional expert advice.

That is, expert advice from Dr Dean Nicolle with respect to the threat that this tree poses to property and person on 5 Regent Street (more particularly the front driveway area) given the condition of this tree and the unacceptable and gradually increasing risk it poses in terms of limb failure and drop.

As outlined by James Hilditch by letter of 27 September 2024, it is understood that neither Council nor the owners of this tree (the neighbours at 3 Regent Street) are supportive of the total removal of this tree.

It is also understood and expected that the Council and neighbours would not support the periodic lopping of the entire canopy of the tree back to its previous lopping points at 5 to 6 metres above ground level to manage risk on an ongoing basis.

To be clear on this, it is the opinion of Dr Nicolle that this tree will need to be completely re-lopped back to the original lopping points every time its regrowth leaders reach a point (which they well and truly have now) at which they present an unacceptable risk of limb drop.

Phillip Brunning & Associates

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2. Proposal

In response to this unacceptable risk which is completely beyond their control (because the approval and agreement of the neighbours and the Council will be required to either remove or lop the tree), Alice & Rahul propose a structure under the target Zone of the tree's regrowth leaders.

The design and specification of this protective structure has been informed by expert structural engineering advice from Gama Consulting. A letter from Gama Consulting also accompanies my clients' application.

The design presented by Mountford Williamson Architecture adopts the enhanced structural capacity recommended by Gama Consulting to afford a higher level of protection, in a manner that complements the design of the existing dwelling and minimises its prominence when viewed from Regent Street.

The composition of this structure has also been informed by advice provided by Dr Nicolle with respect to the Structural Root Zone and the Tree Protection Zone of this Significant Tree, to minimise impact on and provide a suitable growing environment for this tree.



3. Context

The land on which this structure is proposed is more particularly described as Allotment 1 in Deposited Plan 5346, within the Hundred of Adelaide as recorded in Certificate of Title Volume 5720 Folio 220.

The land is held in fee simple as a Torrens title with no easements or covenants. The land has frontage of 15 m to Regent Street, a depth of 42.72 m resulting in an area of some of 641 m². The land is developed with a single storey dwelling.



The locality is characterised by one and two storey dwellings of varying architectural styles and periods. The adjoining property to the south (corner with Andrew Avenue) comprises a two storey dwelling which is sited within 1135 mm of the Regent Street frontage.

The large gum tree in question is identified above via a yellow circle.



I also think it appropriate to note and consider the following examples of structures within the locality in Regent Street, which are of a far greater level visual intrusion and dominance in the streetscape than that which is proposed.



20 REGENT STREET



24 REGENT STREET

I provide these examples not so much as justification for the proposal, but to demonstrate that Regent Street does not have a homogeneous or pristine streetscape character in terms of the manner in which buildings relate to the street. It comprises a mixture of built form presenting a variety of outcomes to the local streetscape, including garaging to the street boundary.

There is substantial variation along this section of Regent Street with respect to building set backs, architectural styles and periods of construction, front fence type (solid and open), landscape planting and paving.

It is in this context that the proposed structure must be considered. The practical reality of the situation and the safety concerns expressed by Dr Nicolle, who is a highly qualified and experienced arborist, need to be taken into account when applying policy provisions expressed by the Code in the assessment of this proposal. It is well-established and recognised that safety is a fundamental concern of town planning.

4. Planning & Design Code

The land is located within the Established Neighbourhood Zone of the Planning & Design Code. The land is also subject to the following policy Overlays and Technical Numerical Variations (TNV) in addition to a range of General Development Policies.

Overlay	Airport Building Heights (Regulated) (All structures over 15 metres) Building Near Airfields Historic Area (Un12) Hazards (Flooding - General) Prescribed Wells Area Regulated and Significant Tree Stormwater Management Urban Tree Canopy
Local Variation (TNV)	Maximum Building Height (Metres) (Maximum building height is 5.6m) Minimum Frontage (Minimum frontage for a detached dwelling is 23m) Minimum Site Area (Minimum site area for a detached dwelling is 750 sqm) Maximum Building Height (Levels) (Maximum building height is 1 level) Minimum Side Boundary Setback (Minimum side boundary setback is 2m for the first building level; 4m for any second building level or higher) Site Coverage (Maximum site coverage is 50 per cent)



The land is within an Historic Area (Residential Spacious Millswood Woolridge Estate) for which a statement of historic character is provided. The properties designated by red stars are understood to be 'representative' buildings.

5. Assessment Considerations

The following matters are most relevant in the assessment of this proposal.

5.1 Nature of Development

The proposed structure is considered to be an '*ancillary building*' albeit that a specific meaning or definition is not provided at Part 7 of the Code. Policies applicable to ancillary buildings do however mention carports more specifically (DPF 11.1).

That said, the structure is attached to and will form part of the dwelling itself.

5.2 Assessment Pathway

On my review of the Code, the proposal is to be *performance assessed*.

With reference to Table 5 – Procedure Matters for the Established Neighbourhood Zone, a carport is listed as being exempt from public notification procedures with no apparent qualifications or exceptions.

5.3 Siting & Design

The following provisions are relevant with respect to siting and design.

- DO 1 A neighbourhood that includes a range of housing types, with new buildings sympathetic to the predominant built form character and development patterns.
- DO 2 Maintain the predominant streetscape character, having regard to key features such as roadside plantings, footpaths, front yards, and space between crossovers.
- PO 3.1 Building footprints are consistent with the character and pattern of the neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.
- PO 11.1 Residential ancillary buildings and structures are sited and designed to not detract from the streetscape or appearance of buildings on the site or neighbouring properties.
- PO 11.2 Ancillary buildings and structures do not impede on-site functional requirements such as private open space provision, car parking requirements or result in over-development of the site.
- PO 11.3 Buildings and structures that are ancillary to an existing non-residential use do not detract from the streetscape character, appearance of buildings on the site of the development, or the amenity of neighbouring properties.

When assessing the proposal against these provisions, the following considerations will be relevant in my opinion:

- the new architecturally designed structure is sympathetic to, integrated with, and complementary to, the existing dwelling and the streetscape, more generally being of a simple low-profile design with minimal visual bulk. It is in every way the smallest and least intrusive structure which could be erected within the target Zone to deal with safety concerns whilst accommodating vehicular and pedestrian access to the dwelling and its garage;

- the projection of this structure into the front set back area would not have a negative impact on the predominant streetscape character which will remain;
- sufficient space will continue to be provided around the existing dwelling for landscaping and use as private open space;
- the resultant site coverage would be 51.8% which is not excessive in this context;
- the aspect or outlook currently enjoyed from properties adjoining and opposite will not be altered to any significant extent. Indeed, I would suggest that the structure will add to the appearance and functionality of the dwelling in a positive way. Furthermore, it will avoid the need to construct a more significant, purpose-built, under-canopy protective structure of at least this size, height, bulk and scale. It will appear as a logical addition to the existing dwelling rather than a more alien and contrived structure designed to withstand the forces of substantial, falling regrowth leaders;
- the form of the proposed structure would not prejudice adjoining properties with respect to access to light or ventilation; and
- the open nature of this structure would not compromise the function of the parking spaces to the front of the existing garage for this dwelling.

5.4 Heritage Character

The following provisions for the Historic Area are relevant.

- DO 1 Historic themes and characteristics are reinforced through conservation and contextually responsive development, design and adaptive reuse that responds to existing coherent patterns of land division, site configuration, streetscapes, building siting and built scale, form and features as exhibited in the Historic Area and expressed in the Historic Area Statement.
- PO 1.1 All development is undertaken having consideration to the historic streetscapes and built form as expressed in the Historic Area Statement.
- PO 2.1 The form and scale of new buildings and structures that are visible from the public realm are consistent with the prevailing historic characteristics of the historic area.
- PO 2.3 Design and architectural detailing of street-facing buildings (including but not limited to roof pitch and form, openings, chimneys and verandahs) complement the prevailing characteristics in the historic area.
- PO 2.4 Development is consistent with the prevailing front and side boundary setback pattern in the historic area.
- PO 2.5 Materials are either consistent with or complement those within the historic area.

More specifically in relation to ‘ancillary’ development:

- PO 4.1 Ancillary development, including carports, outbuildings and garages, complements the historic character of the area and associated buildings.
- PO 4.2 Ancillary development, including carports, outbuildings and garages, is located behind the building line of the principal building(s) and does not dominate the building or its setting.

In applying these provisions, it is appropriate to acknowledge that this section of Regent Street has a varied character with many dwellings of more recent construction and design including that on the subject land.

I would not go so far as to describe this section of Regent Street, in particular that on the eastern side, as having a strong heritage character with a predominance of a particular style or period of construction in the streetscape.

Accordingly, I am of the view that these provisions have less work to do in the consideration of this proposal than may otherwise be the case in a streetscape that does display a strong and consistent heritage character.

The proposed structure would not in my opinion present as a dominant visual element in the streetscape in any event. It will be substantively obscured in the oblique by fencing, existing buildings and of course the significant tree on the adjoining property.

The selection of materials and finishes to be employed while not 'traditional' in the context of this streetscape are neutral in appearance and would blend with that of the existing modern dwelling in a complementary manner.

Similarly, the detailing of this structure is restrained and does not seek to replicate that of historic buildings. It would serve no purpose in my view to adopt a pitched roof form or for that matter ornamentation.

Insofar as the proposed structure (and the existing dwelling) adopts a contrasting design style, I do not anticipate that it will conflict with or detract from the historic character of this locality.

The fact is that a contemporary and modern dwelling already exists on the subject land. It will never contribute to the streetscape in the same way as other properties with old dwellings of heritage value will. It can and will however continue to complement the streetscape.

5.5 Significant Tree

While the construction of the proposed carport would not involve a tree damaging activity, it is relevant to consider the following provisions that speak to conservation of significant trees and approaches to ensure such into the future.

DO 1 Conservation of regulated and significant trees to provide aesthetic and environmental benefits and mitigate tree loss.

PO 1.2 Significant trees are retained where they:

- a) make an important contribution to the character or amenity of the local area
- b) are indigenous to the local area and are listed under the National Parks and Wildlife Act 1972 as a rare or endangered native species
- c) represent an important habitat for native fauna
- d) are part of a wildlife corridor or a remnant area of native vegetation
- e) are important to the maintenance of biodiversity in the local environment and/or
- f) form a notable visual element to the landscape of the local area.

PO 1.4 A tree-damaging activity in connection with other development satisfies all the following:

- a) it accommodates the reasonable development of land in accordance with the relevant zone or subzone where such development might not otherwise be possible
- b) in the case of a significant tree, all reasonable development options and design solutions have been considered to prevent substantial tree-damaging activity occurring.

PO 2.1 Regulated and significant trees, including their root systems, are not unduly compromised by excavation and / or filling of land, or the sealing of surfaces within the vicinity of the tree to support their retention and health.

Earthworks necessary for the supporting structure of this canopy will be very much localised to that required for a simple footing system, the exact position of which may be adjusted to avoid the root system of this significant tree.

There is no need to adjust the existing pavement of the driveway.

As noted above, the substantial lopping or removal of this tree to respond to this identified hazard is not open to my clients. The proposal is on the face of it the only way in which this identified hazard may be responded to by Alice and Rahul.

Accordingly, it is my view that the planning authority would be justified in accepting the proposed structure as a necessary trade off to address this risk while minimising impact on the existing streetscape character of Regent Street. The proposal involves a measured and sensible response to a very difficult problem and a very serious risk (given the size of the re-growth leaders which threaten the target zone in the opinion of Dr Nicolle).

5.6 Access & Parking

The proposed structure will not alter the manner in which access is provided to the existing garage and parking area in front, with no adjustment required to the existing driveway crossover to Regent Street.

Suitable clearance to the underside of the structure will be provided to conveniently access and manoeuvre vehicles in to and out of these parking spaces, with no change to existing sight distance arrangements.

6. Conclusion

The proposed structure is required to address the unacceptable risk posed by this significant tree identified by Dr Nicolle in his detailed written report which accompanies this application.

The architecturally-designed carport structure has been engineered in response to the nature of the risks which it is intended to address. These risks are obvious and cannot be ignored.

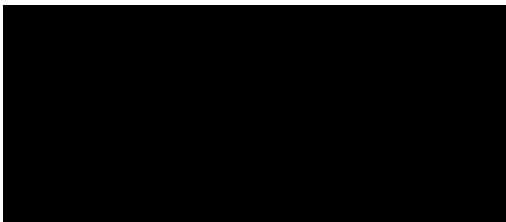
The outcome will, on balance, address obvious risks whilst minimising impact on the streetscape, noting that the addition of a contemporary carport structure in front of the contemporary dwelling on this site will have limited impacts in any event.

I am confident that the character and amenity of this locality will not be compromised in any kind of noticeable way having regard to the existing state of development within it. The proposed structure will be of minimal visual impact and not detract from the existing streetscape or historic character of this area.

For these reasons, I say that planning consent is warranted.

Yours faithfully

PHILLIP BRUNNING & ASSOCIATES PTY LTD



PHILLIP BRUNNING RPIA
Registered Planner
Accredited Professional – Planning Level 1

Arboriculture - Botany - Ecology - Eucalypt Research

**Tree Impact Report:
5 Regent Street, Millswood, SA**

**Arboricultural assessment of a significant
Eucalyptus camaldulensis (river red gum) tree
in relation to a proposed development**



Arboricultural report requested by Alice Adamson and Rahul Mukherjee of 5 Regent Street in Millswood, on the 11th of June 2024.

Arboricultural advice and report prepared by Dean Nicolle following a site inspection and tree assessment on the 17th of June 2024.

Report dated the 8th of July 2024.

CONTENTS

1.0	BACKGROUND	3
2.0	METHODOLOGY	3
3.0	TREE ASSESSMENT	6
4.0	RETENTION VALUE	11
5.0	STRUCTURAL ROOT ZONE (SRZ)	13
6.0	TREE PROTECTION ZONE (TPZ)	14
7.0	PLANNING AND DESIGN CODE	17
7.1	DESIRED OUTCOMES	17
7.2	PERFORMANCE OUTCOMES – Tree Retention and Health	17
7.3	PERFORMANCE OUTCOMES – Ground work affecting trees	20
8.0	SUMMARY of FINDINGS	21
8.1	<i>Legal status</i>	21
8.2	<i>Retention value</i>	21
8.3	<i>Impact of the proposed development on the tree</i>	21
8.4	<i>Risk to safety/property represented by the tree</i>	21
8.5	<i>Planning and Design Code - Performance Outcomes</i>	21
9.0	RECOMMENDATIONS	22
9.1	<i>Tree retention</i>	22
9.2	<i>Tree pruning</i>	22
9.3	<i>Proposed carport development</i>	22

1.0 BACKGROUND

A proposed carport at 5 Regent Street in Millswood has the potential to impact on a significant (as defined by the *Planning, Development and Infrastructure Act 2016*) *Eucalyptus camaldulensis* (river red gum) tree located in the front yard of 3 Regent Street (see Figures 1 and 2).

I have been commissioned to provide an arboricultural assessment of the tree (including an assessment of its health, structure, and risk to safety represented by the tree), and to provide advice regarding the Structural Root Zone, the Tree Protection Zone, and any necessary measures required to minimise the impact of the proposed development on the health of the tree.

This report provides my findings and recommendations with respect to my arboricultural assessment of the subject tree, including:

1. Assessment of the health, structure, and risk to safety represented by the tree;
2. Assessment of the retention value of the tree;
3. Calculation of an appropriate Structural Root Zone and Tree Protection Zone for the tree and any necessary measures required to minimise the impact of the proposed development on the health of the tree;
4. Assessment of the impact of the proposed development on the health and longevity of the tree; and
5. Assessment of the tree and the proposed carport (where it related to the tree) against the Desired Outcome and Performance Outcomes of the Regulated and Significant Tree Overlay of the *Planning & Design Code* adopted 4 July 2024;

2.0 METHODOLOGY

This tree assessment was conducted in accordance with Australian Standard *AS 4970-2009 Protection of Trees on Development Sites* (2009), which provides best practices for the planning and protection of trees on development sites. The Standard provides guidance on how to determine which trees are appropriate for retention, and on the means of protecting those trees during construction.

The Structural Root Zone (SRZ) and Tree Protection Zone (TPZ) has been calculated using methods which conform to *AS 4970*, as detailed in Section 5 (STRUCTURAL ROOT ZONES) and Section 6 (TREE PROTECTION ZONES) of this report. Information and recommendations provided in the report concerning variations to the calculated TPZ and allowable encroachments within the TPZ are in accordance with the guidelines provided in the Australian Standard (*AS 4970*).



Figure 1. Subject tree. The subject tree, looking approximately east from Regent Street on the 17th of June 2024. The superimposed red ring indicates approximately where the trunk and primary leaders of the tree were lopped many years ago (at least 20+ years ago), resulting in long regrowth leaders of epicormic regrowth origin. These regrowth branches are inherently weakly attached and have a significantly increased likelihood of structural failure at their points of origin.



Figure 2. Subject site - Existing conditions. The subject site and tree, looking approximately east from Regent Street on the 17th of June 2024. The superimposed yellow line indicates the approximate area of the proposed carport at 5 Regent Street. Note that this area is currently almost entirely covered by a concrete driveway. The 'target area' of the tree extends well beyond the concrete driveway at 5 Regent Street, being a radius equivalent to the height of the tree (23 metres radius from the centre of the tree).

3.0 TREE ASSESSMENT

<u>Location:</u>	In the front yard of the developed residential allotment of 3 Regent Street in Millswood. Less than 2 metres from the proposed carport and existing concrete driveway at 5 Regent Street in Millswood (Figures 2 and 5).
<u>Species:</u>	<i>Eucalyptus camaldulensis</i> subsp. <i>camaldulensis</i> (river red gum).
<u>Key references:</u>	Nicolle (2013). <i>Native Eucalypts of South Australia</i> . Pp. 44 – 45. Nicolle (2016). <i>Taller Eucalypts for Planting in Australia – Their Selection, Cultivation and Management</i> . Pp. 56 – 59.
<u>Legal status:</u>	A significant tree as defined by the <i>Planning, Development and Infrastructure (PDI) Act 2016</i> and the <i>PDI (General) (Regulated and Significant Trees) Amendment Regulations 2024</i> . - <i>Species:</i> <i>Eucalyptus camaldulensis</i> - <i>Trunk circ. at one metre:</i> >2 metres - <i>Distance to dwelling:</i> Not applicable - <i>Bushfire Risk:</i> Excluded area - <i>Living/dead status:</i> Currently alive - <i>Exemptions:</i> No generic exemptions
<u>Current size:</u>	Approximately 23 metres tall, average of 14 metres wide (canopy spread).
<u>Primary habit:</u>	Single trunk up to approximately 5 metres ground level, where the trunk bifurcates. Both trunks have been lopped at between 5 and 6 metres above ground level many years ago (at least 20+ years ago, presumably to allow clearance to overhead electrical conductors), resulting in long regrowth leaders of epicormic regrowth origin (Figures 3 and 4).
<u>Canopy habit:</u>	Upright-oval, generally moderate in density, and weighted slightly to the east (towards the residential allotments).
<u>Species origin:</u>	Indigenous to the locality.
<u>Tree origin:</u>	Either intentionally planted or of semi-remnant origin (self-seeded following European colonisation of the area).
<u>Estimated age:</u>	80 – 160 years.
<u>Biodiversity value:</u>	High. A reproductively mature and large individual of a locally indigenous species. Faunal-habitable hollows are only evident in the lopping-scars of the tree.
<u>Landscape value:</u>	High. The tree is conspicuous in Regent Street (see Figures 1 and 2).

Actual Life Expectancy¹: Another 50+ years.

Useful Life Expectancy²: The Useful Life Expectancy of the tree has been exceeded if the tree is not periodically re-lopped back to the point of the previous lopping. The Useful Life Expectancy of the tree is another 50+ years with periodic re-lopping of the tree (see Section 9.1 under RECOMMENDATIONS).

Health: Above average and apparently stable³.

Vigour: Moderate.

General structure: Poor. The trunk and primary leaders of the tree have been lopped at 5 to 6 metres above ground level many years ago (at least 20+ years ago, presumably to allow clearance to overhead electrical conductors), resulting in long regrowth leaders of epicormic regrowth origin (Figures 3 and 4). These regrowth branches are inherently weakly attached and have an increased likelihood of structural failure at their points of origin.

Basal structure: Well buttressed, healthy, and apparently sound.

Trunk structure: Healthy and apparently sound *below* the past lopping points. However, major structural defects occur where the tree was long-ago lopped at 5 to 6 metres above ground level.

WTSF likelihood: The *likelihood* of Whole-of-Tree Structural Failure at ground level is currently considered to be extremely low. The *likelihood* of major structural failure of one or more of the primary leaders of the tree at 5 to 6 metres above ground level is currently considered to be moderate to high.

WTSF consequence: The 'target area' of the tree (the area which may be targeted by the structural failure of the regrowth leaders of epicormic origin) is a radius equivalent to the height of the tree. The target zone is therefore 23 metres in radius from the centre of the tree. The *consequence* (impact potential) of structural failure of one or more of the primary leaders (at their point of origin) is likely to cause moderate to significant damage to the existing residential dwelling and associated ancillary structures at 5 Regent Street.

¹ *The Actual Life Expectancy (ALE) of the tree is the amount of time that the tree is expected to be alive, regardless of the landscape value of the tree and its risk to safety and to property.*

² *The Useful Life Expectancy (ULE) of the tree is the amount of time that the tree is expected to be alive and fulfil its function in the locality by having some landscape value and representing an acceptable and manageable risk to safety and to property.*

³ *The health of a tree can be unrelated to the structure and associated risks to safety represented by the tree. As such, a healthy tree can sometimes be structurally flawed and/or otherwise represent an unacceptable risk to safety (as is the case here), while a dead tree can sometimes be structurally sound and represent an acceptable risk to safety.*

Branch structure: Primary branch junctions appear to be healthy and generally well-structured. Although the primary leaders of epicormic regrowth origin are heavy and over-extended (increasing their likelihood of structural failure), the secondary and tertiary branches are not significantly over-extended.

BF likelihood: *Excluding* at the regrowth leader's points or origin, the likelihood of branch failure in this individual is currently considered to be low to moderate.

Failure history: The tree has no evidence of any past significant branch failure events, although any such evidence may have been pruned out of the tree at the time of its lopping many years ago.

Risk to safety: Currently considered to be **moderate to high and unacceptable, and gradually increasing over time** (as the regrowth leaders become longer and more heavily end-weighted with ongoing growth of the tree).

The construction of a carport over the concrete driveway at 5 Regent Street has the potential to significantly reduce the risk to personal safety associated with the tree (by creating a physical barrier between the canopy of the tree and people in the driveway).

The construction of a carport over the concrete driveway at 5 Regent Street does not reduce the overall likelihood of damage to items of value, as cars using/parked the driveway will be more protected but the carport structure itself will be subject to damage in the case of any part of the tree structurally failing.

The risk to safety associated with the tree could be reduced to a lower and acceptable level by the periodic re-lopping of the tree.

Damage/nuisances: The ongoing shedding of leaves, flowers, fruits, and bark from the tree may represent a nuisance issue on the roofs of nearby structures and paved surfaces.



Figure 3. Subject tree – past lopping. The subject tree at approximately 4 to 8 metres above ground level, looking approximately north on the 17th of June 2024. The superimposed red rings indicates where the trunks or primary leaders of the tree were lopped many years ago (at least 20+ years ago), resulting in long regrowth leaders of epicormic regrowth origin. The four number regrowth leaders, which form the bulk of the canopy of the tree, are inherently weakly attached and have a significantly increased likelihood of structural failure at their points of origin.



Figure 4. Subject tree – past lopping. The subject tree at approximately 5 to 7 metres above ground level, looking approximately east on the 17th of June 2024. The superimposed red rings indicates where the trunks or primary leaders of the tree were lopped many years ago (at least 20+ years ago), resulting in long regrowth leaders of epicormic regrowth origin. The four number regrowth leaders (matching the numbering in Figure 3), which form the bulk of the canopy of the tree, are inherently weakly attached and have a significantly increased likelihood of structural failure at their points of origin.

4.0 RETENTION VALUE

The retention value reflects the overall quality of the tree, and is based on the following data:

- Historical significance (*National Trust of South Australia*);
- Tree origin;
- Current health;
- Further Actual Life Expectancy;
- Biodiversity value;
- Landscape value;
- Tree structure;
- Risk to safety; and
- Damage and nuisances.

The tree has been scored for each of these nine characteristics (Table 1). The sum of scores for the tree provides a total score: the higher the total score, the more valuable the tree (Table 2). The total score for a tree can vary from -160 (lowest point value for all nine characteristics) to 130 points (highest point value for all nine characteristics).

In this case, the tree has a score of 12 (see Table 1) and is therefore assessed to be of low value (see Table 2).

Table 1. Scoring for retention value. The characteristics and character states used to score the tree to determine its retention value. The character states for the subject tree are highlighted green.

Historical significance (NTSA⁴)	<i>National importance</i> Score: 40	<i>State importance</i> Score: 30	<i>Regional importance</i> Score: 20	<i>Local importance</i> Score: 10	<i>Not listed on NTSA⁴</i> Score: 0			
Origin	<i>Remnant</i> Score: 10	<i>Remnant/semi</i> Score: 8	<i>Semi-remnant</i> Score: 5	<i>Semi- / planted</i> Score: 3	<i>Planted</i> Score: 0	<i>Planted / weed</i> Score: -5	<i>Weed</i> Score: -10	
Health	<i>Excellent</i> Score: 10	<i>Above average</i> Score: 8	<i>Average</i> Score: 5	<i>Below average</i> Score: 3	<i>Poor</i> Score: 0		<i>Very poor</i> Score: -10	<i>Dead</i> Score: -20
Further Actual Life Expectancy	<i>30+ years</i> Score: 10	<i>20+ years</i> Score: 8	<i>10–20+ years</i> Score: 5	<i>10–20 years</i> Score: 2	<i><10–20 years</i> Score: 0	<i><5–10 years</i> Score: -5	<i><5 years</i> Score: -10	<i><2 years</i> Score: -20
Biodiversity	<i>Very high</i> Score: 10	<i>High</i> Score: 8	<i>Moderate</i> Score: 5	<i>Low</i> Score: 2	<i>Negligible</i> Score: 0		<i>Invasive</i> Score: -10	
Landscape	<i>Very high</i> Score: 10	<i>High</i> Score: 8	<i>Mod to high</i> Score: 5	<i>Moderate</i> Score: 3	<i>Low to mod</i> Score: 0		<i>Low</i> Score: -10	<i>Very low</i> Score: -20
Structure	<i>Excellent</i> Score: 10		<i>Above average</i> Score: 5		<i>Average</i> Score: 0	<i>Below average</i> Score: -5	<i>Poor</i> Score: -10	<i>Very poor</i> Score: -20
Risk to safety	<i>Very low</i> Score: 10	<i>Low</i> Score: 7	<i>Low to mod</i> Score: 4	<i>Moderate & stable</i> Score: 0	<i>Moderate, increasing</i> Score: -10	<i>Mod to high</i> Score: -20	<i>High</i> Score: -30	<i>Very high</i> Score: -40
Damage & nuisances	<i>None</i> Score: 10		<i>No damage but some nuisances (eg leaf debris)</i> Score: 5	<i>No damage, but minor maintenance issues (eg lifted pavers)</i> Score: 0	<i>Damage to minor structures (eg paths/driveways)</i> Score: -5	<i>Damage to moderate structures (eg masonry walls)</i> Score: -10	<i>Damage to substantial structures (eg dwellings)</i> Score: -20	

⁴ *National Trust of South Australia* register of significant trees.

Table 2. Retention value categories. The five retention value categories, for each category the score required, the general description, and the development constraints appropriate. The retention value category of the subject tree (score of 12) is highlighted green.

Retention value	Score	General description	Development constraints
Priority 1A <i>Very high value</i>	>65 points	Remnant or semi-remnant trees in sound health, with a long further Useful Life Expectancy, of superior structure, and with a significant biodiversity value and landscape value	Trees of very highly value are relatively rare and should be retained by appropriate development design and construction.
Priority 1 <i>High value</i>	46 to 65 points	Trees in sound health and/or with a long further Useful Life Expectancy, of generally sound structure (or where defects can be practically mitigated or managed), and usually with a significant biodiversity value &/or landscape value	Trees of high value should be retained by appropriate development design and construction.
Priority 2 <i>Moderate value</i>	30 to 45 points	Trees in sound healthy and/or with an expected moderate to long further Useful Life Expectancy, of reasonable structure (or where defects can be mostly mitigated or managed), and of moderate to high biodiversity value &/or landscape value	Trees of moderate value should be retained whenever possible, by appropriate development design and construction.
Priority 3 <i>Low value</i>	10 to 29 points	Trees often of reduced health and/or having a short to moderate further Useful Life Expectancy, and/or may have some structural flaws, and are generally of lower biodiversity value &/or lower landscape value	Trees of low value should not constrain site development but may be retained if the proposed design and construction allows.
Priority 4 <i>No value</i>	<10 points	Trees in poor health and/or having a short or exceeded Useful Life Expectancy, and/or have significant structural flaws that cannot be practically mitigated or managed, &/or are of no of little biodiversity value &/or landscape value	Trees of no value should not constrain site development and should be removed in the case of site development, even if they do not constrain the development.

These retention value tables serve only as a summary of my professional judgement on the various criteria that I consider relevant to the question of whether the tree is worthy of retention. I use these retention value tables widely when assessing trees, regardless of whether the provisions of the Planning and Design Code Overlay are applicable or not.

Independently of assessing the retention value of the tree, I have also assessed the tree in the context of the following provisions of the Planning and Design Code Overlay (Section 7 - PLANNING AND DESIGN CODE). Some (but not all) of the criteria I have used to assess the retention value of the tree partly overlap with the criteria used to assess the provisions of the Planning and Design Code Overlay. My summary of findings and recommendations are the result of my assessment of the tree in the context of the identified Code provisions.

5.0 STRUCTURAL ROOT ZONE (SRZ)

The Structural Root Zone (SRZ) relates to the *roots of the tree*, and is the area required *to maintain the stability of the tree* during and following any development of a site.

The Structural Root Zone is effectively an ‘exclusion zone’ for all activities and development, as it defines the area around the tree in which major structural (anchorage) roots are likely to occur.

Structural Root Zones are calculated as recommended in the *Australian Standard for the Protection of Trees on Development Sites (AS 4970)*. This is a formula-based method which uses the diameter of the tree at above the root buttress (effectively at ground level in most trees) multiplied by a non-linear factorial (the calculated SRZ tapers-off with larger diameter trees, and varies from a minimum of 1.5 metres radius from the centre of the tree to a maximum of around 5 metres radius from the centre of the tree, depending on trunk diameter).

Activities to be excluded from the Structural Root Zone include any mechanical soil removal (excavation), deposition (storage of fill) or cultivation (disturbance) associated with the proposed development, whether for earthworks, trenching, landscaping, or other associated works, and *include* non-linear fence or pylon footings (i.e. bored pier/post holes and screw-pile piers), *unless it can be demonstrated that the design and construction techniques do not interfere with the roots of the tree where within the SRZ (in accordance with AS 4970-2009)*.

The SRZ for the subject tree has not been calculated due to a lack of access to the base of the tree. However, based on a visually estimated buttress trunk diameter of 1.273 metres (circumference of 4 metres), **the SRZ of the tree would be 3.7 metres in radius from the centre of the tree** (SRZ formula calculation: $((1.273 \times 50)^{0.42}) \times 0.64 = 3.7$ metres).

Based on this SRZ, part of the proposed carport development at 5 Regent Street, as well as part of the existing concrete driveway at 5 Regent Street, will be within the calculated SRZ of the tree. As such, tree-sensitive design and construction will be necessary for the proposed carport structure where within the SRZ of the tree (see Section 9.3 under RECOMMENDATIONS).

6.0 TREE PROTECTION ZONE (TPZ)

The Tree Protection Zone (TPZ) also relates to the *root system of the tree*, and is necessary to *maintain the health of the tree* during and following any development of a site, by limiting construction activities and machinery access within the TPZ.

The Tree Protection Zone does not indicate the root extent (root spread) of the tree, as the root extent is usually greater than the TPZ in most trees. The TPZ merely designates the area in which soil disturbance must be minimised (and therefore root damage minimised) to maintain the health, longevity and stability of the tree.

A Tree Protection Zone is not a 'sterile zone' or an 'exclusion zone' for all activities and development, but instead defines the area around the tree in which tree-sensitive design and construction techniques *must* be employed, in order to maintain the health, longevity and structure of the tree.

Tree Protection Zones are calculated using a method that conforms to the *Australian Standard for the Protection of Trees on Development Sites (AS 4970)*. The Australian Standard allows for the use of species- and tree-specific data to modify the factorial (up or down) to be more specific to the tree being assessed; i.e. relating to the tolerance of the species to root disturbance and the age class of the tree for its species.

Encroachment into a maximum of 10% of the surface area of the TPZ is acceptable provided the encroached area of TPZ is gained elsewhere on the subject site and adjoins the outer edge of the calculated TPZ. Encroachment within more than 10% of the area of the recommended TPZ may detrimentally affect the health of the tree by extensively severing or otherwise damaging the roots of the tree. *Pre-existing developed areas within the calculated TPZ radius are also exempt from the effective⁵ TPZ area.*

Activities that should be excluded from the effective Tree Protection Zone include any mechanical soil removal (excavation), deposition (storage of fill) or cultivation (disturbance) associated with the proposed development, whether for earthworks, trenching, landscaping, or other associated works.

Non-linear fence or pylon footings (i.e. bored pier/post holes and screw-pile piers) are acceptable within the Tree Protection Zone. As such, structures constructed using pier and beam footings are possible within the TPZ. Other structures and construction activities within the TPZ (such as residential driveways, footpaths, roadways, built-form structures, etc.) may be acceptable in some cases, provided tree-sensitive design and construction methods are employed, which may include:

- 1) Laying services within piping or conduits under the TPZ using directional under-boring.
- 2) Construction of hard surfaces (including roadways, driveways, footpaths and floors) over existing soil levels (to avoid the excavation of natural soil) and

⁵ The effective TPZ is the portion of the calculated TPZ that is conducive to root growth, with a surface that is permeable to water and air. Parts of the calculated TPZ that is sealed with non-permeable surfaces (e.g. concrete) and/or non-permeable roofing, is not considered to be part of the effective TPZ.

using structural soil as fill and open-sealed or permeable paving where necessary.

- 3) Pier and beam or screw-pile constructed structures that do not require area-excavation (cut) or linear-excavation (trenching) of natural soil.
- 4) Root-sensitive excavation (e.g. vacuum excavation) to enable larger-sized roots to be retained in-situ. Such excavation is usually used as an exploratory method to ascertain the location and depth of larger-sized roots, which may dictate the required levels/positions of infrastructure.
- 5) Like-for-like replacement of any existing surfaces or structures within the calculated TPZ with new surfaces or structures constructed in the same position within the TPZ.

The TPZ for the subject tree has not been calculated due to a lack of access to the trunk of the tree. However, based on a visually estimated trunk diameter of 1.082 metres (circumference of 3.4 metres) at 1.4 metres above ground level, **the TPZ of the tree would be 9.7 metres in radius from the centre of the tree**. This TPZ is based on the species having a *high* tolerance to soil disturbances = multiplying factor of nine. Thus: 1.082 (trunk diameter at chest height) x 9 = 9.7 metres.

Based on this calculated TPZ, most of the proposed carport development at 5 Regent Street, as well as most of the existing concrete driveway at 5 Regent Street, will be within the *calculated* TPZ of the tree (Figure 5). Note, however, that the concrete driveway at 5 Regent Street is excluded from the *effective* TPZ of the tree, and as such, tree-sensitive design and construction will only be necessary for the proposed carport structure where it is outside of the existing concrete driveway (see Section 9.3 under RECOMMENDATIONS).



Figure 5. Existing and proposed structures. The subject site (subject tree on left of image frame), looking approximately east from Regent Street on the 17th of June 2024. The superimposed yellow polygon indicates the approximate area of the proposed carport at 5 Regent Street. Note that this area is currently almost entirely covered by a concrete driveway. The superimposed red polygons indicate the two areas of the proposed carport that occur outside of the effective Tree Protection Zone – these two areas should be retained as garden beds to absorb rainwater directed there from the roof of the proposed carport structure (see Section 9.3 under RECOMMENDATIONS).

7.0 PLANNING AND DESIGN CODE
Adopted 4 July 2024

Regulated and Significant Tree Overlay – Assessment Provisions

7.1 DESIRED OUTCOME

DO 1 Conservation of regulated and significant trees to provide aesthetic and environmental benefits and mitigate tree loss.

The tree is significant as defined by the *Planning, Development and Infrastructure (PDI) Act 2016* and the *PDI (General) (Regulated and Significant Trees) Amendment Regulations 2024*.

The tree provides various aesthetic and environmental benefits, as detailed in the Section 7.2 (*Performance Outcomes*) below.

7.2 PERFORMANCE OUTCOMES – Tree Retention and Health

PO 1.2 Significant trees are retained where they:

(a) make an important visual contribution to the character or amenity of the local area

I acknowledge that this matter may fall outside the area of my expertise. However, in my opinion the tree does make an important visual contribution to the character or amenity of the local area. The tree is conspicuous in the Regent Street streetscape.

(b) are indigenous to the local area and are listed under the National Parks and Wildlife Act 1972 as a rare or endangered native species

The tree is of a species that is indigenous to the locality, but is not classified as rare or endangered under the *Act*.

(c) represent an important habitat for native fauna

The tree arguably represents an important habitat for native fauna. The tree is a reproductively mature specimen of a locally indigenous species, but no faunal-habitable hollows (other than in the previous lopping scars) are evident in the tree.

(d) are part of a wildlife corridor of a remnant area of native vegetation

The tree is not part of a wildlife corridor of remnant native vegetation.

(e) are important to the maintenance of biodiversity in the local environment

The tree is important to the maintenance of biodiversity in the local environment. The tree is a reproductively mature specimen of a locally indigenous species. No faunal-habitable hollows (other than in the previous lopping scars) are evident in the tree.

and / or

(f) form a notable visual element to the landscape of the local area.

I acknowledge that this matter may fall outside the area of my expertise. However, in my opinion the tree does form a notable visual element to the landscape of the local area. The tree is conspicuous in the Regent Street streetscape.

PO 1.3 A tree damaging activity not in connection with other development satisfies (a) and (b):

[PO 1.3 would apply in the case of removal of the tree and in the case of the periodic re-logging of the tree]

(a) tree damaging activity is only undertaken to:

(i) remove a diseased tree where its life expectancy is short

The tree is not unusually diseased, however the Useful Life Expectancy of the tree has been exceeded if the tree is not periodically re-logged (see below).

(ii) mitigate an unacceptable risk to public or private safety due to limb drop or the like

The tree currently represents a moderate to high and unacceptable, and gradually increasing, risk to safety, associated with the long-past lopping of the tree, resulting in heavy regrowth leaders of epicormic regrowth origin (Figures 3 and 4). These regrowth branches are inherently weakly attached and have an increased likelihood of structural failure at their points of origin.

The risk to safety associated with the tree could be reduced to a lower and acceptable level by the periodic re-logging of the tree (see Section 9.2 under RECOMMENDATIONS).

The risk to safety associated with the tree would be reduced by the construction of a carport structure over the existing concrete driveway at 5 Regent Street (see Section 9.3 under RECOMMENDATIONS).

(iii) rectify or prevent extensive damage to a building of value as comprising any of the following:

- A. a Local Heritage Place***
- B. a State Heritage Place***
- C. a substantial building of value***

The tree is not currently causing or threatening to cause extensive damage to a building of value of any of the above.

(iv) reduce an unacceptable hazard associated with a tree within 20 m of an existing residential, tourist accommodation or other habitable building from a bushfire

The tree is not a bushfire hazard.

(v) treat disease or otherwise in the general interests of the health of the tree

Not applicable.

and / or

(vi) maintain the aesthetic appearance and structural integrity of the tree

The periodic re-logging of the tree will temporarily significantly reduce the biodiversity and landscape value of the tree at each lopping event (see Section 9.2 under RECOMMENDATIONS).

(b) in relation to a significant tree, tree damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective.

Other than tree removal or the periodic re-logging of the tree, the only other remedial treatments to reduce the risk to safety and to property to a lower and acceptable level is:

1. The construction of overhead, under-canopy protective structures (such as a carport); or
2. The creation of an exclusion zone within the target zone of the tree.

PO 1.4 A tree-damaging activity in connection with other development satisfies all the following:

[PO 1.4 and 2.1 would potentially apply in the case of construction of a proposed carport, noting that if designed and constructed in a tree-sensitive manner, the carport would not cause tree damaging activity]

(a) it accommodates the reasonable development of land in accordance with the relevant zone or subzone where such development might not otherwise be possible

I acknowledge that this matter (what development is ‘reasonable’ for the land) falls outside the area of my expertise.

(b) in the case of a significant tree, all reasonable development options and design solutions have been considered to prevent substantial tree-damaging activity occurring.

A carport structure over the existing concrete driveway at 5 Regent Street will reduce the risk to personal safety associated with the tree, regardless of whether the tree is periodically re-lopped or not.

7.3 PERFORMANCE OUTCOMES – Ground work affecting trees

PO 2.1 Regulated and significant trees, including their root systems, are not unduly compromised by excavation and / or filling of land, or the sealing of surfaces within the vicinity of the tree to support their retention and health.

[PO 1.4 and 2.1 would potentially apply in the case of construction of a proposed carport, noting that if designed and constructed in a tree-sensitive manner, the carport would not cause tree damaging activity]

The health, longevity and stability of the tree would not be unduly compromised by the construction of a proposed carport over the existing concrete driveway at 5 Regent Street, provided the structure is designed and constructed in a tree-sensitive manner (see Section 9.3 under RECOMMENDATIONS).

8.0 SUMMARY of FINDINGS

8.1 Legal status

The subject tree is significant as defined by the as defined by the *Planning, Development and Infrastructure Act 2016*. As such, development approval is required to remove or otherwise damage the tree.

8.2 Retention value

The subject tree is healthy and has high biodiversity and landscape values. However, the overall retention value of the tree is significantly diminished due to its poor structure (due to the long-past lopping of the tree) and the associated elevated risk to safety and to property. Overall, the tree is assessed to be of low value. Trees of low value should not constrain site development but may be retained if the proposed design and construction allows.

8.3 Impact of the proposed development on the tree

The proposed carport development is unlikely to detrimentally impact on the health, longevity and stability of the tree provided tree sensitive design and construction occurs where within the Structural Root Zone and the *effective* Tree Protection Zone of the tree (see Section 9.0 RECOMMENDATIONS).

8.4 Risk to safety/property represented by the tree

The tree currently represents a moderate to high and unacceptable, and gradually increasing, risk to safety, associated with the long-past lopping of the tree, resulting in heavy regrowth leaders of epicormic regrowth origin (Figures 3 and 4). These regrowth branches are inherently weakly attached and have an increased likelihood of structural failure at their points of origin.

The risk to safety associated with the tree could be reduced to a lower and acceptable level by:

1. The removal of the tree; or
2. The periodic re-lopping of the tree; and/or
3. The construction of overhead, under-canopy protective structures (such as a carport); or
4. The creation of an exclusion zone within the target zone of the tree.

8.5 Planning and Design Code - Performance Outcomes

The tree may satisfy *Performance Outcomes* 1.2 (a), (c), (e) and (f) of the Regulated and Significant Tree Overlay Assessment Provisions in the Code.

Tree damaging activity (i.e. the periodic re-lopping or removal of the tree) satisfies *Performance Outcomes* 1.3 (a) (ii) and (b) of the Regulated and Significant Tree Overlay Assessment Provisions in the Code.

The construction of a carport at 5 Regent Street satisfies *Performance Outcomes* 1.4 (b) and 2.1 of the Regulated and Significant Tree Overlay Assessment Provisions in the Code.

9.0 RECOMMENDATIONS

9.1 *Tree retention*

I would be supportive tree removal if the periodic re-logging of the tree is not considered feasible or is otherwise not undertaken for any reason.

9.2 *Tree pruning*

I am supportive of any development proposal to re-lop the tree. Such pruning would require the immediate re-logging of the tree, back to its previous lopping points at 5 to 6 metres above ground level. This will remove the potentially weakly-attached, heavy leaders of epicormic regrowth origin and stimulate the tree to grow new shoots of similar epicormic-regrowth origin. Subsequent re-logging of the tree in the same manner (back to the previous lopping points) will be required every 5 to 15 years, depending in the growth rate of the regrowth branches. The periodic re-logging of the tree will temporarily significantly reduce the biodiversity and landscape value of the tree at each lopping event (due to the complete removal of the canopy of the tree, back to its previous lopping points at 5 to 6 metres above ground level, at each re-logging event).

9.1 *Proposed carport development*

In the case of tree retention (with or without re-logging of the tree), I am supportive of a proposed carport over the existing concrete driveway at 5 Regent Street, provided the following tree-sensitive design and construction occurs:

1. The footing for the proposed carport structure are piers or posts (not strip footings) throughout; and
2. Any pier/post footings within the Structural Root Zone of the tree (3.7 metres radius from the centre of the tree) be excavated using a soil vacuum, with any roots greater than 80 mm in diameter retained with the location and size of the pier/posts holes adjusted to accommodate any such roots; and
3. Any pier/post footings within the calculated Tree Protection Zone of the tree (9.7 metres radius from the centre of the tree) but outside of the Structural Root Zone of the tree can be excavated mechanically (i.e. drilled); and
4. Rainfall falling on the roof of the proposed carport structure is directed back to the unsealed strip on each side of the existing concrete driveway, rather than being diverted to the Regent Street watertable or off site; and
5. No sealing of the unsealed strip on each side of the existing concrete driveway, with those areas retained as garden beds to absorb rainwater directed there from the roof of the proposed carport structure (see Figure 5).

I thank you for the opportunity to provide this arboricultural assessment and advice. If you require further information or clarification please contact me for assistance.



Dean Nicolle
OAM, BAppSc Natural Resource Management, BSc Botany (Hons), Ph.D

ATTACHMENT 2

DEVELOPMENT NO.:	24033919
APPLICANT:	Alice Adamson
NATURE OF DEVELOPMENT:	Carport
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Building Near Airfields • Historic Area • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Metres) (Maximum building height is 5.6m) • Minimum Frontage (Minimum frontage for a detached dwelling is 23m) • Minimum Site Area (Minimum site area for a detached dwelling is 750 sqm) • Maximum Building Height (Levels) (Maximum building height is 1 level) • Minimum Side Boundary Setback (Minimum side boundary setback is 2m for the first building level; 4m for any second building level or higher) • Site Coverage (Maximum site coverage is 50 per cent)
LODGEMENT DATE:	8 Oct 2024
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Unley
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) Version 2024.17 12/9/2024

DETAILED DESCRIPTION OF PROPOSAL:

The proposal seeks the construction of a combined carport and entry canopy attached to the façade of the existing single storey dwelling.

It will have a total height of 3.1m, a width of 9m and an area of 50m². The structure will be setback 0.43m from the northern (side) boundary and setback 1.1m from the primary street frontage. The carport will be comprised of a white fibre cement sheet flat roof with timber soffit lining supported by white circular columns.

The proposal is in response to the refusal of DA 24009737 which sought the construction of a carport and canopy in the same location. DA 24009737 was appealed to the Environment, Resources and Development Court (ERD), where a proposal to lodge and revised development application was made. This application is that proposal.

The applicant has provided a planning report from Phil Bruning & Associates, a letter from Hilditch Lawyers, and a Tree Impact Report from Dean Nicole. The noted purpose of the structure is to protect from the possibility of a limb drop from a significant River Red Gum located on the adjoining allotment at 3 Regent Street.

LOCATION OF DEVELOPMENT:

Location reference: 5 REGENT ST MILLSWOOD SA 5034

Title ref.: CT 5720/220 **Plan Parcel:** D53246 AL1 **Council:** CITY OF UNLEY

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Carport or garage
Carport: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

No

REASON

As per table 5, the proposed development falls under column A and is not excluded by exceptions in column B

AGENCY REFERRALS

None

INTERNAL REFERRALS

Sam Cassar – Arborist

The pruning specified by the applicant's arborist is excessive and unjustified through the tree observations and limited past failure history. The pruning recommended by Applicant's arborist will result in a notable amenity loss and is likely to compromise tree health. I do recommend reduction pruning of the main leader that extends over the garage at 5 Regent Street is implemented in the coming 3 months as a minimum. It is also recommended that a detailed pruning plan be developed by a suitably qualified arborist (Level 5 and above) to address crown defects to maintain tree health and stability.

The proposed carport is supported if tree sensitive footing system and techniques are used as specified as part of this report for the entire TPZ radius of 14.52m and the existing concrete driveway at 5 Regent Street is retained

Planning Consultant

Advice provided on the assessment and description of the locality

PLANNING & DESIGN CODE POLICIES

The application has been assessed against the relevant policies of the Planning and Design Code

Relevant Policies
ZONE
Established Neighbourhood Zone
DO 1, DO 2
PO 3.1, PO 10.1, PO 11.1, PO 11.2, Table 5
OVERLAYS
Historic Area Overlay
DO 1
PO 1.1, PO 2.1, PO 2.2, PO 2.3, PO 2.4, PO 2.5, PO 4.1, PO 4.2
Historic Area Statement
Regulated and Significant Tree Overlay
DO 1
PO 1.1, PO 1.2, PO 1.3, PO 1.4, PO 2.1
GENERAL DEVELOPMENT POLICIES
Design in Urban Areas
DO 1

PO 8.1, PO 20.2, PO 23.3, PO 23.4, PO 23.5

Policy Appendix

Refer to document – *P&D Code Rules - at Assessment Start*

Discussion:

Site and Locality

The subject site is located in the Historic Area Overlay (HAO) and Established Neighbourhood Zone (ENZ). The Desired Outcomes of both the Overlay and the Zone seek development that maintains, and is contextually responsive to, the existing built form and streetscape character of the area. The proposed development is captured by the *Residential Spacious Millswood Wooldridge Estate Historic Area Statement (Un12)*.

The subject land is located on the eastern side of Regent Street, North of Andrew Avenue and South of Wooldridge Avenue.

The allotment is regular in shape and has a frontage to Regent Street of 15 metres and a depth of 42.75 metres with an overall area of approximately 642 square metres.

A modern single storey detached dwelling with a solid front fence occupies the subject land. The land is generally flat with a slight fall toward the street. A very large river red gum is located close to the north-western corner of the subject land on the adjoining land to the north.

The immediate locality extends from number 4 to 14 on the western side of Regent Street and includes 1 and 3 Regent Street as well as 17 and 22 Andrew Avenue on the eastern side of Regent Street.

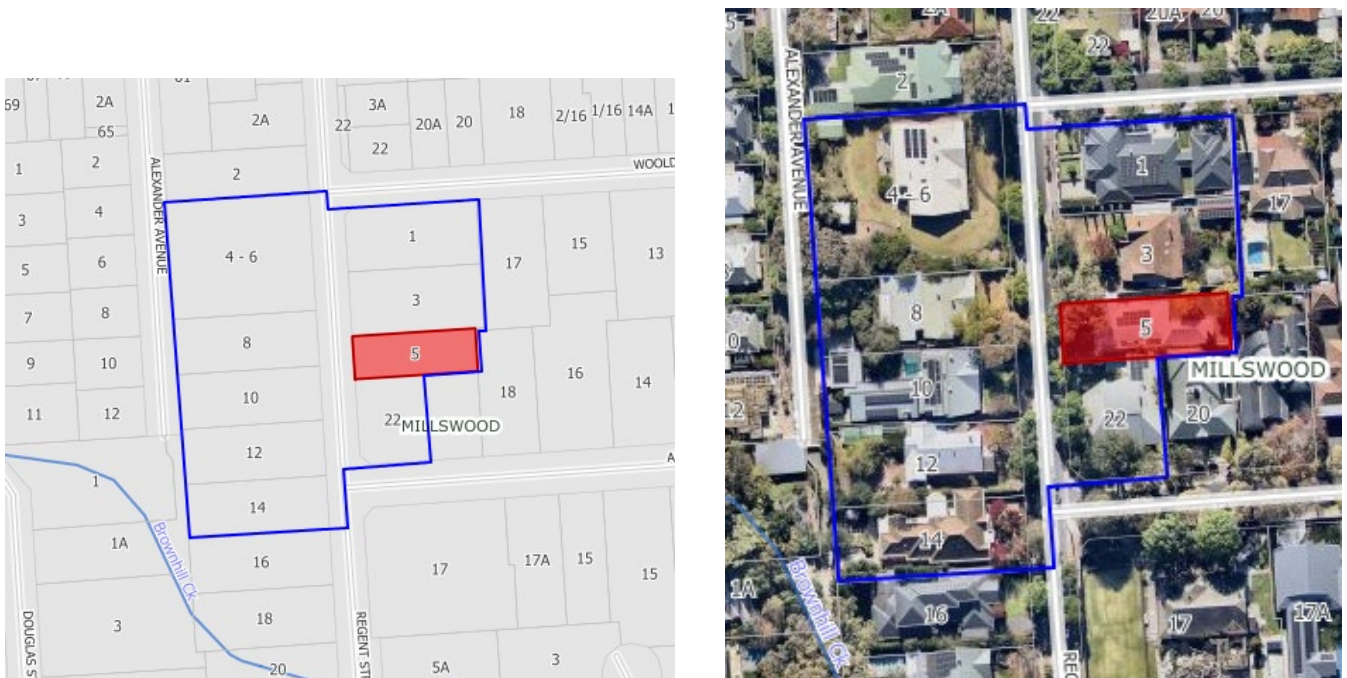


Figure 1: Locality Map

I form the view that the locality is limited to the properties contained within the bounds of the blue line in the image above. I have arrived at this conclusion on the basis that the site is not able to be viewed from beyond the highlighted properties. The properties located directly adjacent to the rear (eastern side) of the subject land are not included as the proposed structure will not be able to be viewed from these properties.

The locality is characterised predominantly by single storey buildings presenting to the street with a mix of architectural styles. It is noted, the dwellings at 10 Regent and 22 Andrew Avenue have been constructed with second level additions that are not highly visible from the street. The allotment pattern is relatively consistent, in particular the properties fronting Regent Street have similar frontage widths and depth of allotment.

Traditional dwellings styles in the form of bungalows are found at 4-6, 8, 10 and 12 Regent Street whilst 3 Regent Street is of an Art deco style. The dwellings at 1 and 14 Regent and 22 Andrew Avenue as well as the subject land are examples of more recent contemporary construction.

The locality maintains a consistent front setback pattern with landscaped front yards contributing to a high level of amenity. As evidenced on the aerial image, the dwellings on the western side of the street maintain a consistent setback of approximately 9 metres. The dwelling at 1 and 3 Regent Street maintain front setbacks in the order of 7 metres and 15 metres respectively. The dwelling at 22 Andrew Avenue is setback approximately 1.5 metres from Regent Street noting that this setback relates to the secondary street frontage is not considered to form part of the Regent Street setback pattern.

It is noted that solid front fencing is evident on approximately 50% of the dwellings within the locality the other 50% having either low open style fencing or pier and plinth with open style infill. Other than fencing, the locality does not have any evidence of ancillary structures such as carports or garages forward of the building line. Such structures would present a foreign element in the streetscape and have a detrimental impact on the streetscape.

There are some examples of ancillary structures located forward of dwellings further south of the immediate locality. These structures are located at 20 and 24 Regent Street and are examples of undesired development with a detrimental streetscape impact. Further it is noted that an outbuilding is sited close to the street boundary at 17 Andrew Avenue however considering this presents to the secondary street frontage it is not considered to be forward of the building line.

Built Form

Assessment of ancillary structures in the HAO hinges on the following Performance Outcomes:

PO 1.1 - All development is undertaken having consideration to the historic streetscapes and built form as expressed in the Historic Area Statement.

PO 4.1 Ancillary development, including carports, outbuildings and garages, complements the historic character of the area and associated buildings.

PO 4.2 Ancillary development, including carports, outbuildings and garages, is located behind the building line of the principal building(s) and does not dominate the building or its setting.

The proposed carport is effectively the same as proposed in DA 24009737, with the only noticeable change being a slight reduction in the height of the fascia.

The flat roof form and white render of the proposed carport is in keeping with the style of the existing dwelling but fails to complement the character of the area. As discussed above, the character of the area is a mixture of contemporary and character dwellings with any ancillary development recessed from the building line of dwellings. There are examples of garages forward of the dwelling in Regent Street. However, they are located outside of the locality, approved under previous legislation, would fail to satisfy the provisions of the Planning and

Design Code, and are generally poor design outcomes. It is a generally accepted planning principle that poor examples of development do not justify further poor development outcomes.

To be complementary, the proposal would need to enhance or emphasise the character of the locality. As a carport sited forward of the building line would be an anomaly, it would cause a departure from the established pattern of the locality. The related HAS describes carports as being, “separate and recessed from the main building and façade, and are a minor, unobtrusive presence in the streetscape”. The structure therefore fails to satisfy PO 1.1 and 4.1 of the HAO.

As the structure is 5.7m forward of the building line, it explicitly fails PO 4.2 of the HAO. This policy is further reinforced by provisions in the the ENZ, namely:

- *PO 10.1 Garages and carports are designed and sited to be discreet and not dominate the appearance of the associated dwelling when viewed from the street.*
- *PO 11.1 Residential ancillary buildings and structures are sited and designed to not detract from the streetscape or appearance of buildings on the site or neighbouring properties.*

The DPF provisions of PO 10.1 and PO 11.1 both seek carports to be at least 0.5m behind the building line of the associated dwelling and at least 5.5m setback from the boundary of the primary street. The proposed 1.1m setback from the primary street and the structures siting clearly fail these DPF provisions.

As the most forward structure on the site, and within 1.1m of the primary street boundary, the carport is not discreet when viewed from the street. The site has a frontage of 15m, and the proposed structure will have a width of 9.1m. It will therefore be over half the width of the site frontage. Given this, it would become the site’s most prominent element when viewed from the street and dominate the appearance of the associated dwelling. It therefore fails to satisfy PO 10.1 and PO 11.1 of the ENZ.

General Development Policies – Design in Urban Areas also reinforces the unobtrusive, minor role carports should have in the design of dwellings. Specifically:

- *PO 20.1 Garaging is designed to not detract from the streetscape or appearance of a dwelling.*

The related DPF 20.1 provisions seek carports not to be sited in front of the building line and to be setback at least 5.5m from the primary street; the same as in the ENZ. As discussed, the proposal far exceeds these quantitative provisions and is the dominate element of the dwelling, failing PO 20.1 of the Design in Urban Areas.

Site Coverage

PO 3.1 Building footprints are consistent with the character and pattern of the neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.

The proposal will also exceed the DPF requirement for site coverage in the ENZ. The proposal will result in site coverage of 51.8% exceeding the 50% sought in DPF 3.1. The departure is quantitatively minor and the merits of the application hinge on policies already discussed relating to the streetscape and character impact rather than to its addition to the overall site coverage.

Significant Tree

In November 2023, the applicant lodged a pruning application for the subject tree (DA 23030316) which was assessed and refused by Council. The assessing officer refused the application on the grounds that:

The proposed pruning is considered to likely adversely impact the aesthetic appearance and structural integrity of the tree and does not satisfy with Regulated and Significant Tree Overlay assessment Provision PO 1.3 (a) vi.

Regulated and Significant Tree Overlay - PO 1.3

A tree damaging activity not in connection with other development satisfies (a) and (b):

- a) tree damaging activity is only undertaken to:
 - i) remove a diseased tree where its life expectancy is short*
 - ii) mitigate an unacceptable risk to public or private safety due to limb drop or the like*
 - iii) rectify or prevent extensive damage to a building of value as comprising any of the following:
 - A. a Local Heritage Place*
 - B. a State Heritage Place*
 - C. a substantial building of value*and there is no reasonable alternative to rectify or prevent such damage other than to undertake a tree damaging activity*
 - iv) reduce an unacceptable hazard associated with a tree within 20m of an existing residential, tourist accommodation or other habitable building from bushfire*
 - v) treat disease or otherwise in the general interests of the health of the tree and / or*
 - vi) maintain the aesthetic appearance and structural integrity of the tree**
- b) in relation to a significant tree, tree-damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective.*

During the assessment the proposal was referred to Council's arborist who did not support the extent of proposed pruning and provided an alternative pruning plan. This was forwarded to the applicant but no response was received. The owners of the subject tree were in support of the alternative pruning plan.

Accompanying DA 24033919, the applicant provided a Tree Impact Report by Dean Nicole to justify the encroachment of the proposed carport within the SRZ of the subject, and to provide an arboricultural assessment of the tree. Mr Nicole's report was referred to Council's arborist for review.

Both Council's arborist and Mr Nicole agree that the trunk and primary leaders of the tree were lopped at 5 to 6m from ground level several years ago resulting in long regrowth leaders of epicormic regrowth. Mr Nicole's risk assessment of the tree finds that:

The tree currently represents a moderate to high and unacceptable, and gradually increasing, risk to safety... regrowth branches are inherently weakly attached and have an increased likelihood of structural failure at their points of origin

Due to this, Mr Nicole is supportive of the tree's removal, however if this is not achievable, he recommends:

The immediate re-logging of the tree, back to its previous logging points at 5 to 6 metres above ground level. Subsequent re-logging of the tree in the same manner (back to the previous logging points) will be required every 5 to 15 years.

Mr Nicole is supportive, regardless of re-logging occurring or not, of a proposed carport over the existing driveway which he states would significantly reduce the risk to personal safety associated with the tree.

The report from Mr Nicole was referred to Council's arborist for review. The extent of logging was not supported as:

- The crown does not extend over any habitable targets
- An upper crown failure is currently classified as Improbable or Possible using TRAQ
- Pruning options are available to address crown defects including the reduction of overhang that extends over the garage and driveway

As stated by an accompanying letter from Hilditch Lawyers, the Tree Impact Report is intended to demonstrate that:

- To mitigate the risk of branch failure, heavy logging of the tree has to occur which would adversely affect the amenity of the tree.
- This would be a poor outcome from an amenity perspective, and regardless cannot be undertaken due to the inability of the applicant to secure the agreement of the tree owner
- Therefore, the only available option to the landowner is to erect a carport to protect the area under the tree from branch failure.

Considering the opinion of Council's arborist, the premise of this argument is flawed. Pruning options are available to address any crown defects.

When assessed against PO 1.3 of the *Regulated and Significant Tree Overlay*, the proposal would fail to satisfy part b) which states:

in relation to a significant tree, tree-damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective.

The report from Mr Nicole does not specifically consider why alternative pruning options would be ineffective – this is despite the applicant being provided in DA 23030316 an alternative pruning plan from Council's arborist.

Furthermore, Mr Nicole argues that the risk to "personal safety" would be "significantly" reduced by the carport which would provide a barrier between the tree canopy and people in the driveway.

In correspondence with the applicant in the original DA, the applicant expressed, "all we want to do is park our cars, without the threat of damage to person or property". A double garage already exists on the site which currently fulfils this purpose by providing two covered spaces for the dwelling. It is unclear why if the applicant is so concerned with the risk of branch failure, they do not park their cars in the existing double garage.

To summarise, it has not been demonstrated that all reasonable remedial measures have been determined to be ineffective given a pruning plan is available which would reduce the risk to public or private safety to acceptable levels.

RECOMMENDATION

REFUSED

Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code.

The proposed combined carport and canopy is sited forward of the building line and would be the visually dominant feature of the dwelling, failing PO 4.2 of the Historic Area Overlay and PO 10.1 of the Established Neighbourhood Zone.

The proposed combined carport and canopy has an insufficient setback from the primary street and is not in keeping with the character of the locality, failing PO 1.1 and PO 4.1 of the Historic Area Overlay; PO 11.1 of the Established Neighbourhood Zone; and PO 20.1 of Design in Urban Areas.

CONDITIONS

Planning Consent

Nil

ADVISORY NOTES

Planning Consent

Advisory Note 1

The applicant has the right of review and appeal pursuant to section 202 of the PDI Act 2016.

An application to the Council Assessment Panel to review a decision by the Assessment Manager must be made within 1 month of applicant receiving this notice of decision.

An appeal to the Court against a decision by the Assessment Manager or Council Assessment Panel must be made directly to the Environment, Resources and Development Court within 2 months of the applicant receiving this notice of decision. The Court is located at the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0289).

OFFICER MAKING RECOMMENDATION

Name: Nicholas Bolton

Title: Planning Officer

Date: 31/10/2024

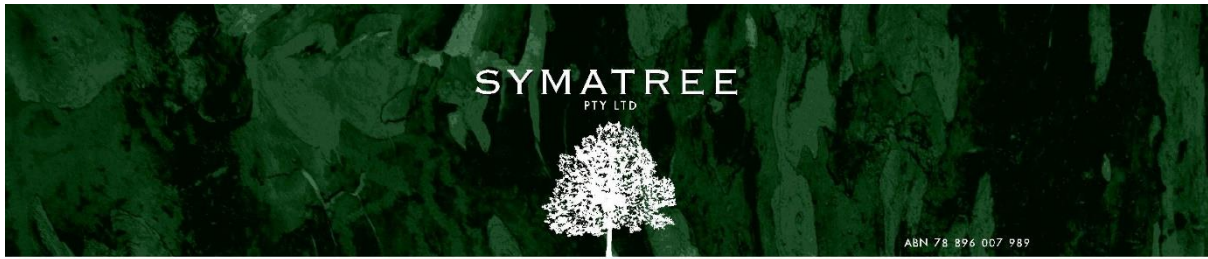
DECISION AUTHORITY

Relevant Authority: Assessment panel/Assessment manager at City of Unley

Consent: Planning Consent

Date: 31/10/2024
Delegation Policy: Instrument D
Delegate Name: Gary Brinkworth
Delegate Title: Assessment Manager

ATTACHMENT 3



Client	City of Unley
Location	5 Regent Street Millswood
Date	24 October 2024
Subject:	Tree-Damaging Activity Summary Report

Brief

Symatree was engaged by The City of Unley to determine if a proposed carport can be constructed without causing tree-damaging activity and if the lopping of the whole crown is warranted. The subject tree is a mature River Red Gum located in southwestern corner of 3 Regent Street, immediately north to the driveway at 5 Regent Street.

Introduction

The subject tree (image right) is a mature *Eucalyptus camaldulensis* (River Red Gum). The Tree has a trunk circumference at 1 metre from ground greater than 3m and is therefore subject to planning controls and considered a Significant Tree. Detailed pruning requirements for the subject tree are beyond the scope of this report. Only the reduction of overhang extending over the front yard of 5 Regent Street was considered.



Tree Protection Zones

TPZ Radius – 14.52m
 SRZ Radius - 3.37m

The TPZs provided above conform with Australian Standard AS 4970-2009 *Protection of trees on development sites*.

Current Health

Good - the foliage colour and size are normal. Foliage density is typical of the species. No concerning diseases were observed.

Current Structure

Fair – the tree has been lopped approximately 5-6m from ground 20 plus year ago. Two dead stubs remain. The subsequent regrowth consists of 4 mature main leaders and one eastern secondary branch. This growth is relatively well formed. No unstable attributes or substantial history of branch failure were observed. Attachment points appear sound and free from any defects that can be observed from ground (image opposite page). Some areas of overextension and end weight where noted.

Proposed Carport

The proposed carport can be supported if tree sensitive footing system and techniques are used and the existing concrete driveway at 5 Regent Street is retained. The following tree sensitive construction techniques must be adhered to within the designated TPZ:

Carport Construction

- Post holes must be hand dug or excavated by HydroVac® at low pressure, under the supervision of the project arborist
- If roots are found, the post hole should be relocated as appropriate.

General Protection Measures

- No activity involving or using fuel, oil or chemicals should be conducted within the TPZ.
- No storage of material, building rubble, construction materials, equipment or temporary buildings/structures should be allowed within the areas of the TPZ.
- No changes to natural grades within the TPZ should occur.

Storm Water Management

- The management of rainfall as proposed by the applicant's arborist, directed back to each side of the concrete driveway and no sealing of the two garden areas either side of the existing driveway is supported.



Proposed Lopping

I do not support the lopping of the entire crown as proposed by the applicant's arborist for the following reasons.

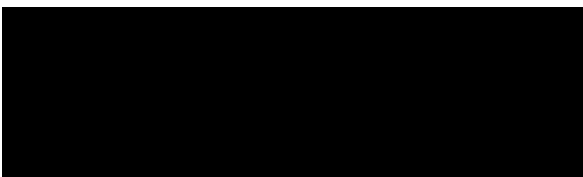
- The crown does not extend over any habitable targets. A dwelling is typically the most valuable asset and any dwelling located under the target zone is considered a fixed high value target. It being habitable a large branch could potentially cause severe injury or death or damage to the actual dwelling structure. The only constant targets within the failure zone of the subject tree is the existing garage and some overhead powerlines. Regent Street is a fairly quiet residential street with occasional occupancy throughout the majority of the day with occupancy spikes surrounding typical commuting and school travel periods. This occupancy rate would substantially reduce during the evening. The bulk of the crown extends over the front yard of 3 Regent street and this is classified as 'weather affected target'. The other weather affected target is a small part of the footpath. This means these areas are unlikely to be occupied during a storm event when a branch is most likely to fail. Given these factors, the likely risk scenario is a failed branch damaging a parked vehicle or similar stationary or fixed target.
- Crown removal or Veteran Tree Management (VTM) is typically only conducted on trees where the integrity within the upper crown has substantially deteriorated such as a large vertical stem failure or considerable crown dieback. An upper crown failure is currently classified as Improbable or Possible using TRAQ. In order to justify the removal of the crown, an upper crown failure must be classified as Probable of Imminent and/or have fixed high value targets (dwellings) within the failure zone.

- Pruning options are available to address crown defects including the reduction of overhang that extends over the garage and driveway at 5 Regent street refer Appendix A.
- The applicant's arborist in his report considers the risks associated with this tree to be moderate to high and unacceptable, and gradually increasing risk to safety, associated with the long-past lopping of the tree, resulting in heavy regrowth leaders of epicormic regrowth origin). At no stage has the applicant's arborist identified this tree as having an unacceptable level of risk based upon specific crown defects within the trees branching framework. The applicant's arborist has stated *the Primary branch junctions appear to be healthy and generally well-structured. Although the primary leaders of epicormic regrowth origin are heavy and over-extended (increasing their likelihood of structural failure), the secondary and tertiary branches are not significantly over-extended.*
- The applicant's arborist only considered 4 risk mitigation strategies total tree removal, periodic re-lopping, the construction of overhead, under-canopy protective structures and the creation of an exclusion zone. At no stage has the applicant's arborist considered pruning options to address crown defects and maintain the amenity the tree provides.

The pruning specified by the applicant's arborist is excessive and unjustified through the tree observations and limited past failure history. The pruning recommended by Applicant's arborist will result in a notable amenity loss and is likely to compromise tree health. I do recommend reduction pruning of the main leader that extends over the garage at 5 Regent Street is implemented in the coming 3 months as a minimum. It is also recommended that a detailed pruning plan be developed by a suitably qualified arborist (Level 5 and above) to address crown defects to maintain tree health and stability.

The proposed carport is supported if tree sensitive footing system and techniques are used as specified as part of this report for the entire TPZ radius of 14.52m and the existing concrete driveway at 5 Regent Street is retained.

Should you have any questions or require further information, please do not hesitate to contact me.



Sam Cassar

Appendix A – Pruning Overhang



Approximate reduction points indicated in red.



Approximate reduction points indicated in red.

ATTACHMENT 4

DECISION NOTIFICATION FORM

Section 126(1) of the Planning, Development and Infrastructure Act 2016

TO THE APPLICANT(S):

Name: Alice Adamson
Postal address: 5 REGENT STREET MILLSWOOD SA 5034
Email: [REDACTED]

IN REGARD TO:

Development application no.: 24033919	Lodged on: 8 Oct 2024
Nature of proposed development: Carport	

LOCATION OF PROPOSED DEVELOPMENT:

Location reference: 5 REGENT ST MILLSWOOD SA 5034		
Title ref.: CT 5720/220	Plan Parcel: D53246 AL1	Council: CITY OF UNLEY

DECISION:

Decision type	Decision (granted/refused)	Decision date	No. of conditions	No. of reserved matters	Entity responsible for decision (relevant authority)
Planning Consent	Refused	31 Oct 2024			Assessment Manager at City of Unley
Building Consent					To be Determined
Development Approval - Planning Consent; Building Consent					City of Unley

FROM THE RELEVANT AUTHORITY: Assessment Manager - Section 96 - Performance Assessed at City of Unley
Date: 31 Oct 2024

REFUSAL REASONS

Planning Consent

The proposed combined carport and canopy is sited forward of the building line and would be the visually dominant feature of the dwelling, failing PO 4.2 of the Historic Area Overlay and PO 10.1 of the Established Neighbourhood Zone.

The proposed combined carport and canopy has an insufficient setback from the primary street and is not in keeping with the character of the locality, failing PO 1.1 and PO 4.1 of the Historic Area Overlay; PO 11.1 of the Established Neighbourhood Zone; and PO 20.1 of Design in Urban Areas.

ADVISORY NOTES

Planning Consent

The applicant has the right of review and appeal pursuant to section 202 of the PDI Act 2016.

An application to the Council Assessment Panel to review a decision by the Assessment Manager must be made within 1 month of applicant receiving this notice of decision.

An appeal to the Court against a decision by the Assessment Manger or Council Assessment Panel must be made directly to the Environment, Resources and Development Court within 2 months of the applicant receiving this notice of decision. The Court is located at the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0289).

CONTACT DETAILS OF CONSENT AUTHORITIES

Name: City of Unley	Type of consent: Planning
Telephone: 0883725111	Email: DevelopmentServices@unley.sa.gov.au
Postal address: PO Box 1, Unley SA 5061	

ATTACHMENT 5

Unley Council Assessment Panel (CAP) Application to CAP to Review Decision of Assessment Manager

Decision Review Request

Prescribed form pursuant to section 203(1) for review of a decision of an Assessment Manager under section 202(1)(b)(i)A of the *Planning, Development and Infrastructure Act 2016* (Act)

Applicant details:	Name: Alice Adamson Phone: [REDACTED] Email: phil@phillipbrunning.com Postal address: C/- PBA Level 1, 27 Halifax Street, Adelaide SA 5000
Development Application Number:	24033919
Subject Land:	5 Regent Street, Millswood SA 5034 Allotment 1 in Deposited Plan 53246, Certificate of Title Volume 5720 Folio 220
Date of decision of the Assessment Manager:	31 October 2024
Decision (prescribed matter¹) for review by Assessment Panel:	The decision of the Assessment Manager at City of Unley to refuse Planning consent in respect of DA 24033919 for the construction of a carport
Reason for review:	Planning Consent should have been granted in respect of DA 24033919 having regard to all of the relevant provisions in the Planning and Design Code and all the surrounding circumstances and for the detailed reasons outlined in the attached letter from Hilditch Lawyers dated 19 November 2024 which outlines the facts, circumstances and other relevant matters upon which this application is based. The Applicant requests the Panel to set aside the Assessment Manager's decision and substitute its own decision to grant Planning Consent in respect of DA 24033919
Do you wish to be heard by the Assessment Panel?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Date:	20 November 2024
Signature:	Phillip Brunning on behalf of Alice Adamson <input checked="" type="checkbox"/> <i>If being lodged electronically please tick to indicate agreement to this declaration.</i>

¹ **Prescribed matter**, in relation to an application for a development authorisation, means—

- (a) any assessment, request, decision, direction or act of the Assessment Manager under the Act that is relevant to any aspect of the determination of the application; or
- (b) a decision to refuse to grant the authorisation; or
- (c) the imposition of conditions in relation to the authorisation; or
- (d) subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of the assessment manager under the Act in relation to the authorisation.



HILDITCH LAWYERS

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Adelaide SA 5000

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Adelaide SA 5001
www.hilditchlawyers.com

Tel 08 7325 5900
Fax 08 8231 8323
lawyers@hilditchlawyers.com

19 November 2024

The Presiding Member
Unley Council Assessment Panel
PO Box 1
Unley SA 5061

Dear Presiding Member

Application to CAP to Review Decision of Assessment Manager
5 Regent Street, Millswood (DA 24033919)

I confirm I act for Ms Alice Adamson and Mr Rahul Mukherjee who are the owners and occupiers of the dwelling at the above address. Ms Adamson is the applicant in respect of the above development application ("the DA").

This letter forms part of Ms Adamson's application to the Unley Council Assessment Panel ("the Panel") pursuant to section 202(1)(b)(i)(A) of the Planning, Development and Infrastructure Act, 2016 for a review of the decision of the Assessment Manager at City of Unley to refuse Planning Consent made on 31 October 2024.

My client received a Decision Notification Form in relation to the decision of the Assessment Manager dated 31 October 2024 setting out the "refusal reasons".

The DA was accompanied by a letter from my firm dated 27 September 2024 ("the Letter"). My client relies upon the contents of that letter, and all other documentation submitted with the DA, when making this application to the Panel.

The Letter explains that the proposal for a carport involves quite unique circumstances. Its primary functional purpose is to act as a protective under-canopy structure in response to the risk to life and property presented by a badly compromised River Red Gum ("the Tree") located on the neighbours' land at 3 Regent street.

The Tree has quite obviously been aggressively lopped (presumably by a utilities company) in the past and, in response, has developed a compromised

Liability limited by a scheme approved under Professional Standards Legislation.

Hilditch Lawyers Pty Ltd ACN 145 516 276

canopy comprising some very large and undoubtedly heavy epicormic regrowth. As the regrowth becomes larger and heavier, the risk of failure increases. Any failure will occur without warning and could occur in any climatic conditions. My client's driveway and front pedestrian path are directly beneath the target zone. The target zone is therefore under regular daily use by my client, my client's family and any visitors. I refer to the report of Dr Dean Nicolle dated 8 July 2024, which accompanies this application, in relation to the *"moderate to high and unacceptable, and gradually increasing, risk to safety, associated with the long-past lopping of the tree, resulting in heavy regrowth leaders of epicormic regrowth origin"*.

Whole tree removal is supported by Dr Nicolle (as the alternative to periodic lopping). My client of course cannot remove the tree because it is not her tree and its trunk is not located on her land. My client also cannot lop the tree to manage the risk as per the advice of her consultant arborist, Dr Dean Nicolle, because it is not her tree to lop. This would require the undertaking of periodic major work on the neighbours' land to the neighbours' tree. In any event, the consequences and cost of periodic lopping to manage the risk would involve an absurd approach to the problem as it will periodically decimate the appearance and structure of the tree to ensure its ongoing safety.

Both the removal and lopping of the tree also require development authorisation. Neither the neighbours nor the Council are supportive of these solutions. I attach a copy of the most recent email exchange between my client and her neighbours at 3 Regent Street [REDACTED] to confirm the position.

Having regard to the clear advice of Dr Nicolle dated 8 July 2024, which is clearly not disputed having regard to the refusal reasons (noting that there is no basis at all upon which to dispute it), **my client has one solution left which is to protect herself and her family by constructing an under-canopy structure over the driveway and pedestrian path.**

The structure has been designed by architects and engineers at significant expense to achieve the dual purpose of providing protection whilst also comprising an entirely appropriate, integrated solution from a visual perspective which maintains access to the garage and front door. It is difficult to think of a more logical, effective, low profile, under-canopy solution which will better integrate with the dwelling and read more logically with the streetscape than the proposed carport structure. The notion of excluding the use of the areas beneath the target zone would obviously be ridiculous as the design and functionality of the dwelling relies entirely on the use of the driveway and pedestrian path beneath the target zone.

In the alternative, my client will welcome a solution which involves the removal of the tree now (noting that there is now an obvious risk that a significant branch failure could occur at any time having regard to the opinion of Dr Nicolle) before an event occurs in which case the carport structure (and frankly the expense of constructing it) will no longer be necessary. The need for the protective carport structure will then obviously fall away. However, I am instructed that the neighbours and the Council do not support the removal of the tree, noting that **both of these parties must agree to support and**

facilitate this solution if it is to materialise (because a development authorisation AND the agreement of the owners at 3 Regent Street are required before any removal or lopping can occur). As a result, this solution is unavailable and hypothetical. This solution is unattainable from my client's perspective and yet this problem must be addressed.

Any refusal to acknowledge the obvious risk here will frustrate the achievement of a safe and logical outcome. Any suggestion that the asserted impact of this architecturally-designed protective carport structure on the streetscape outweighs the importance of addressing the risk would surely be difficult to logically sustain on the basis of all of the current information before the Council.

I would respectfully remind the Council of the remarks made by the Environment, Resources and Development Court in the matter of *Unley Property Development v City of Holdfast Bay* [1998] SAERDC 532 at paragraph 19 where the Court made the following remark:

"19 "Safety" is a basic concern of town planning and one about which the benefit of the doubt should be given rarely, if at all."

I would respectfully encourage the Council to take its own legal advice before it further considers this matter. My client is trying to offer a solution to a very difficult problem which must be addressed. It is a solution which involves the preservation of the tree and which enables all parties to move forward. It addresses an obvious safety issue in a way which will have minimal impact on a streetscape which already features garaging for other dwellings on the street boundary (note for example the structures at 20 Regent Street and 24 Regent Street by way of example which form part of the existing streetscape).

I confirm that I am instructed to request to be heard by the Assessment Panel members in relation to this application and I would be grateful if you would advise us of the date and time of the relevant meeting.

Please contact me if you have any queries or if you require any further information.



James Hilditch

james@hilditchlawyers.com

Our Ref: JRH:000867
Your Ref:



Good Morning Rahul and Alice

Thank you for keeping us in the loop with your discussions with Council.

Just one thing , the only attachment to your email was the arborist's report. We would be interested to see the Council's "Decision Notification Form", to see on what basis they rejected your application.

However, as per our email of the 16th of July 2024, our preference still remains that the tree is retained.




As you are aware, we are continuing to explore ways to address the serious concerns we have in relation to the river Red Gum growing in your front yard and the related risk of significant branch failure over our property. We attach a report from our consultant arborist, Dr Dean Nicolle, dated 8 July 2024 which outlines the position from his perspective.

We have applied to the Council to build a protective carport structure under the target zone to address the risk. We attach a Decision Notification Form from the Council refusing the application. We have further rights in relation to this application and intend to pursue them if left with no other option. However, before this goes further (at growing expense), would you please advise us if there are any circumstances at all in which you might agree to the removal of the tree? We respect your desire to keep it and do not wish to continue to explore a solution which you simply do not agree to. However, you will understand that we must be certain of your position on all of this before going further exploring the carport alternative.

Would you please let us know by Monday 18 November 2024 whether there might be any circumstances in which you will agree to the removal of this tree now?

We would be happy to discuss this at your convenience if you have any questions on 

Regards,

Rahul Mukherjee & Alice Adamson

ATTACHMENT 6

DEVELOPMENT NO.:	23030316
APPLICANT:	Alice Elizabeth Lytton Adamson Rahul Mukherjee
NATURE OF DEVELOPMENT:	Pruning of a significant Eucalyptus camaldulensis (River Red Gum) at 3 Regent Street Millswood
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Established Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Building Near Airfields • Historic Area • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Metres) (Maximum building height is 5.6m) • Minimum Frontage (Minimum frontage for a detached dwelling is 23m) • Minimum Site Area (Minimum site area for a detached dwelling is 750 sqm) • Maximum Building Height (Levels) (Maximum building height is 1 level) • Minimum Side Boundary Setback (Minimum side boundary setback is 2m for the first building level; 4m for any second building level or higher) • Site Coverage (Maximum site coverage is 50 per cent)
LODGEMENT DATE:	10 Nov 2023
RELEVANT AUTHORITY:	Assessment panel/Assessment manager at City of Unley
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) - Version 2023.16 - 09/11/2023

DETAILED DESCRIPTION OF PROPOSAL:

This development proposes the pruning of a significant tree (River Red Gum) at 3 Regent Street Millswood, an adjacent site to that of the applicant.

LOCATION OF DEVELOPMENT:

Location reference: 3 REGENT ST MILLSWOOD SA 5034

Title ref.: CT 5214/885 **Plan Parcel:** D3596 A22 **Council:** CITY OF UNLEY

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
Tree-damaging activity: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

No

- **REASON**
N/A

AGENCY REFERRALS

NA

INTERNAL REFERRALS

- Consultant Arborist

PLANNING & DESIGN CODE POLICIES

Relevant Policies
ZONE
Established Neighbourhood Zone
DO 1, DO 2
OVERLAYS
Regulated and Significant Tree Overlay
DO 1
PO 1.1, 1.2, 1.3, 1.4, 2.1
Policy Appendix

PLANNING ASSESSMENT

This development proposes the pruning of a significant tree (River Red Gum) at 3 Regent Street Millswood, an adjacent site to that of the applicant.

Pursuant to Regulation 48 the owner of the tree was notified with a response querying the extent of pruning. Once the pruning plan provided by Council's arborist (see below) was provided, the owner of the tree was satisfied with the proposal.

This tree has been determined to be significant pursuant to Regulation 3F (2) (a) as it has a circumference as measured 1 metre above ground level of greater 3m and is a Eucalyptus species.

The definition of tree damaging activity in section 3 (1) of the PDI act prescribes certain activities to be tree-damaging activities in sub-paragraphs (a) to (e) and states that the definition does not include the following two types of pruning:

1. Maintenance pruning that is not likely to affect adversely the general health or appearance of a tree; **or**
2. [pruning].. that is excluded by regulation from the ambit of this definition.

The proposed pruning is not considered maintenance pruning (type 1) as it is considered to potentially impact the health and appearance of the tree and is not considered to satisfy regulation 3F (6) as the pruning is not to remove diseased or dead wood, branches that pose a material risk to a building; or branches to a tree that is located in an area frequently used by people and the branches pose a material risk to such people. As such the proposed pruning is considered to be a tree damaging activity.

Regulated and Significant Trees PO 1.3 states:

A tree damaging activity not in connection with other development satisfies (a) and (b):

(a) Tree damaging activity is only undertaken to:

- i. remove a diseased tree where its life expectancy is short*
 - ii. mitigate an unacceptable risk to public or private safety due to limb drop or the like*
 - iii. rectify or prevent extensive damage to a building of value as comprising any of the following:
A. a Local Heritage Place
B. a State Heritage Place
C. a substantial building of value
and there is no reasonable alternative to rectify or prevent such damage other than to undertake a tree damaging activity*
 - iv. reduce an unacceptable hazard associated with a tree within 20m of an existing residential, tourist accommodation or other habitable building from bushfire*
 - v. treat disease or otherwise in the general interests of the health of the tree and / or*
 - vi. maintain the aesthetic appearance and structural integrity of the tree*
- (b) in relation to a significant tree, tree-damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective.*

As noted above the extent of pruning is not considered to be “maintenance pruning” and does not satisfy Regulation 3F (6).

The application was referred to Council’s consultant arborist who stated that the extent of pruning is not supported a large gap on the south-eastern side will occur exposing the remaining crown to additional wind loading if the entire south-eastern leader is removed. An alternative pruning scheme was recommended which would not adversely impact the tree and would remove those branches extending over the southern neighbouring dwelling but reduce loading.

During the assessment this revised pruning plan was forwarded to the applicant stating the proposed pruning was not supportable and requesting the pruning plan be amended in line with Council’s arborist’s recommendation. This was sent on 21/11/2023. No response was received.

A follow up email was sent on 22 March 2024 reiterating the request. No response to this email was received.

A final email was sent to the applicant on 3 May 2024 providing a final period of time (9 May 2024) to respond. No response was received.

Given the above assessment and recommendations from Council’s arborist the proposed pruning will not satisfy PO 1.3 (a) vi and therefore does not warrant consent.

RECOMMENDATION

Refused as it does not satisfy the relevant criteria for removal.

Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code.

REFUSAL REASONS

Planning Consent

The application to prune a significant tree at 3 Regent Street Millswood is not considered to meet the following provisions:

- The proposed pruning is considered to likely adversely impact the aesthetic appearance and structural integrity of the tree and does not satisfy with Regulated and Significant Tree Overlay assessment Provision PO 1.3 (a) vi.

CONDITIONS

Planning Consent

NA

ADVISORY NOTES

Planning Consent

The applicant has the right of review and appeal pursuant to section 202 of the PDI Act 2016.

An application to the Council Assessment Panel to review a decision by the Assessment Manager must be made within 1 month of applicant receiving this notice of decision.

An appeal to the Court against a decision by the Assessment Manger or Council Assessment Panel must be made directly to the Environment, Resources and Development Court within 2 months of the applicant receiving this notice of decision. The Court is located at the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0289).

OFFICER MAKING RECOMMENDATION

Name: Timothy Bourner

Title: Senior Planner

Date: 10/05/2024

DECISION AUTHORITY

Relevant Authority: Assessment manager at City of Unley

Consent: Planning Consent

Date: 10/05/2024

Delegation Policy: Instrument D

Delegate Name: Don Donaldson

Delegate Title: Assessment Manager

ATTACHMENT 7

Timothy Bourner

From: [REDACTED]
Sent: Tuesday, 21 November 2023 3:27 PM
To: Timothy Bourner
Subject: RE: Pruning of a significant tree - 5 Regent Street Millswood

CAUTION: This email originated from outside the organisation. Do not act on instructions, click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon Tim,

Thank you for the clarification and based on that I have no objection to the amended pruning plan.

Regards

From: Timothy Bourner <Tbourner@unley.sa.gov.au>
Sent: Tuesday, November 21, 2023 1:31 PM
To: [REDACTED]
Subject: RE: Pruning of a significant tree - 5 Regent Street Millswood

Hi [REDACTED]

You are correct that this pruning plan has only 2 cuts. This is to minimise the impact and future health of the tree.

The two photos show the same cuts, just one is a close up.

Kind regards



Timothy Bourner
Senior Planner
Development & Regulatory Services
City of Unley
Kaurna Country
P: (08) 8372 5433
unley.sa.gov.au

From: [REDACTED]
Sent: Thursday, 16 November 2023 7:02 AM
To: Timothy Bourner <Tbourner@unley.sa.gov.au>
Subject: RE: Pruning of a significant tree - 5 Regent Street Millswood

CAUTION: This email originated from outside the organisation. Do not act on instructions, click links or open attachments unless you recognise the sender and know the content is safe.

Good morning Tim,

Thank you for the pruning plan. Before I agree to this pruning, I would like to confirm my understanding of the attached photos, namely:

- The first photograph is a close up of the proposed limb pruning i.e. two cuts,
- The second photograph is a view of the tree showing where the two cuts will be undertaken,
- There are only two cuts undertaken on the **entire tree**.

I'm sorry for the questions however no matter how many times I look at the two photographs I can't make the visual connection between the cuts and the limbs.

Regards

From: Timothy Bourner <Tbourner@unley.sa.gov.au>
Sent: Wednesday, November 15, 2023 4:16 PM
To: [REDACTED]
Subject: Pruning of a significant tree - 5 Regent Street Millswood

Hi [REDACTED]

Thank you for your call.

I have attached the recommended pruning plan from Council's consultant arborist, Sam Cassar of Symatree. I have also included his comments to me below:

Hi Tim,

I inspected the subject tree yesterday as discussed. Pruning of the limbs extending over the driveway/carport of the southern neighbouring property is supported given a bark inclusion is noted at the main attachment point. I note the tree had been lopped sometime ago just above the primary union. The extent of pruning proposed however is not supported, a large gap on the south-eastern side will occur exposing the remaining crown to additional wind loading if the entire south-eastern leader is removed. As an alternative it is recommended to reduce both south eastern leaders by approximately 50%, back to suitable reduction points (refer attached). This will not only remove those branches extending over the southern neighbouring dwelling but reduce loading. Please let me know if you have any questions or require further information.

Regards Sam

I will be supportive of the pruning if they adhere to Council's arborists advice.

Once you have responded to me I will contact the applicant and have them amend their plan to reflect the above.

Once I have finished the assessment I will send you a copy of the Decision Notification Form which details the approval and any conditions relevant to the pruning.

If you have any questions, please feel free to contact me again.

Kind regards,



Timothy Bourner
Senior Planner
Development & Regulatory Services
City of Unley
Kaurna Country
P: (08) 8372 5433
unley.sa.gov.au



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ITEM 6.1**APPLICATIONS BEFORE THE ERD COURT - SUMMARY OF ERD COURT APPEALS**

TO: City of Unley Council Assessment Panel

FROM: Tim Bourner, Assessment Manager

SUBJECT: Summary of ERD Court Appeals

MEETING DATE: January 29th 2025

APPEALS - 1

Development Application / Subject Site	Nature of Development	Decision authority and date	Current status
DA22040422 - 7 Thornber Street, Unley Park	Demolition	Refused by CAP, March 21 st 2023	The appeal has been withdrawn
DA24009737 – 5 Regent Street, Millswood	Carport	Refused under delegation , May 3 rd 2024	Appealed to ERD, Hearing scheduled on Feb 7 th 2025