

26 March 2013

NOTICE OF MOTION NO 7/2013 - REVIEW REFUSED APPLICATIONS FOR TREE REMOVAL

2013/080553

Submitted by: Councillor Vincent De Luca OAM

MOTION

1. That this Council notes:

a. That on 23 February 2013 a tree, which had been the subject of a development application on the neighbouring property, two years prior for removal, which had been refused, fell on a property at 5 Peronne Parade, Allambie Heights occasioning significant damage to the carport and pergola attached to the house and trauma for the residents.

b. That in the Supreme Court case of *Timbs V Shoalhaven City Council* [2004] NSWCA 81 Mr Timbs sought council permission to remove a large gum tree near his house. A council officer inspected the tree and refused permission to remove the tree, stating it was 'safe and sound'. During a storm the tree fell onto Mr Timb's house, resulting in his death. Further inspection indicated that the roots were decayed, but this was not easily seen Mrs Timbs sued the Shoalhaven City Council for negligence, and the council was found to be liable for economic loss. When the council officer stated that the tree was safe, the Timbs relied on his opinion because of his position, and did not cut down the tree. The council officer did not have to provide expert opinion, and could have suggested that the Timbs obtain independent advice about the condition of the tree. Damages totaling over \$700,000 were awarded to Mrs Timbs. For the full Statement of Decision go to:
<http://www.austlii.edu.au/au/cases/nsw/NSWCA/2004/81.html>

c. That applicants who are dissatisfied with Council's determination of applications for tree removal can submit a report from an independant Arborist and if that report finds the tree is in a dangerous state then the tree can be removed. It should be noted that this did not occur in this matter.

d. The payment to the owners made by the General Manager for expenses associated with the removal of the tree.

2. That this Council resolves to:

a. Extend it sincere sympathy to Rock and Kendal Davis-Bogan for their tragic circumstances.

b. Request the General Manager to prepare a report on the application of the DCP for tree removal taking into account the particular circumstances of this case.