

14 March 2016

C A & K Smith
9 Flora Dora Parade
LAKE HAWEA 9382

Dear Craig

RESOURCE CONSENT APPLICATION LUC-2015-507
8 KILGOUR STREET
DUNEDIN

The above application for land use consent was processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee comprising Councillors Andrew Noone, Lee Vandervis (Chairperson) and Independent Commissioner Colin Weatherall heard and considered the application at a hearing on 7 March 2016.

At the end of the public part of the hearing, the Committee, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

The Committee carried out a site visit on Monday 7 March 2016. The site visit included the subject site, the submitter's property at 10 Kilgour Street and viewing locations in the local neighbourhood.

The Committee has **granted** consent to the application on 14 March 2016. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant was represented by:

- Craig Smith (Applicant)
- Peter Waymouth (Consultant Arborist)

Council staff attending were:

John Sule (Advisor to Committee), Amy Young (Processing Planner), Barry Knox (Landscape Architect), Aidan Battrick (Arborist) and Wendy Collard (Governance Support Officer).

Submitters in attendance were:

- Lauren Weaver (Submitter)

Procedural Issues

A procedural issue was discussed in relation to whether Lauren Weaver was an affected party or a submitter. The Committee advisor noted that a letter of support from Ms Weaver was provided with the application and the application form identified her as a party that had provided an affected party approval. On that basis she was identified as an affected party in the Section 42A report. After the report was released information was received indicating that Ms Weaver wanted to submit. The Committee advisor noted that to resolve any

uncertainty regarding affected party status and her ability to submit the processing planner Amy Young had requested that she withdraw her affected party status. This was undertaken by Ms Weaver in writing prior to the hearing.

Mr Sule noted that this withdrawal would now enable her to either be considered as a submitter or to make submissions in support of the applicant. It was explained that if Ms Weaver was an affected party the effects of an activity on her site could not be taken into account by the Committee. This would include the positive effects of removal of the tree. The Committee noted the withdrawal of the affected party status and resolved to accept the original information provided with the application and the additional written materials as a submission in support of the application. A resolution was passed to that effect.

Councillor Vandervis identified errors on page 36 of the agenda. Amendments were made to the agenda document to remove comment on the STEM assessment suggesting the assessments was still in draft form. It was confirmed by Council officers that the STEM assessment was in its final form.

Principal Issues of Contention

The principal issues of contention are as follows:

- The difference in the expert STEM assessments.
- The degree of risk posed by the tree and the suitability, cost and effectiveness of mitigation options.
- The degree of adverse effect arising from the tree and whether these effects would increase over time.

Summary of Evidence

Introduction from Processing Planner

The processing planner Amy Young introduced the proposal and the key findings from her report. She accepted the STEM assessment provided by the Council's arborist and Landscape Architect that indicated the tree was significant and worthy of inclusion on the schedule of significant trees. She commented that its removal would have an adverse effect on the amenity values of the wider environment. She noted that while there was an identified risk issue with the tree in relation to one of its larger limbs that mitigation options were available.

Overall she acknowledged that the matter was finely balanced due to the proximity of the tree to dwellings 8 & 10 Kilgour Street and the risk and nuisance issues. On balance she recommended that the consent be declined as adverse effects appeared minor and the risk of limb failure could be mitigated.

The Applicant's Case

Craig Smith spoke in support of his application noting that he felt that the tree is too large for the site. He advised that following Mr Waymouth's assessment and report he had serious concerns about the safety of the tree and he outlined his concern for people and property on his site and neighbouring sites. Mr Smith provided background on his purchase of the property and advised the Committee that this was not a short term project for him. He noted he was not set on removing the tree at the time of purchase but the advice he had received and concerns about ongoing costs had resulted in him making an application to remove the tree.

Peter Waymouth commented on his background and experience and discussed his pre-circulated evidence. He discussed the STEM assessment he had undertaken and identified the reasons for the differences in his assessment and the assessment undertaken by the Council's experts. He noted his assessment score came in lower because of a difference of opinion in relation to visibility and frequency. He noted he had visited the area to determine frequency and found that there were at least 8 Red Beech trees in the neighbourhood. The largest one he identified was on Ross Street which is not listed in Schedule 25.3. He noted the other difference was in relation to the visibility score for the tree.

He provided a risk assessment and options for mitigation of effects in the report but he noted the mitigation would come at a large cost.

Mr Waymouth responded to questions from the Committee on the STEM assessment system, risk of limb failure, mitigation options and costs and the historic pruning which had resulted in the current form of the tree. He noted that cabling would be complicated and not a full proof mitigation option. He considered that pruning and cabling would not likely lead to a change in the STEM score he had submitted. He also agreed that removal of the limb with the included union would have a negative impact on the health of the tree.

Evidence of Submitter (Summary)

Lauren Weaver

Dr Lauren Weaver provided a background to her purchase of her property. She outlined that her principal concern was the risk of tree limb failure and the damage that it could cause to her living area, hallway and back door to her property. She also noted that pathway along the side of house is used frequently. She identified that the tree was creating nuisance issues in relation to the guttering for her dwelling.

In response to questions from the Committee Dr Weaver noted that her concrete path is cracked and uplifted which she assumes is due to the tree. She noted that while there is a lot of tree debris in her gutters and shading on the side of the house that faces 8 Kilgour Street safety is her main concern.

Council Officers Review

Barry Knox commented on his evidence and STEM process. He noted that it was a process that is used throughout NZ that attempts objective analysis of matters that are subjective in some cases. He agreed with the Committee's observation that the STEM analysis does not allow for negative attributes associated with a tree to be taken into account. In response to a question from the Committee Mr Knox noted that he could not be sure whether any cabling used to reduce the risk of limb failure would have an impact on amenity values.

In response to a question from the Committee about the difference in the STEM assessment scores Mr Knox confirmed he was not surprised by the difference in the STEM assessments. He noted the assessment to be subjective in relation to matters of visibility. It was noted by the Committee Advisor that although the STEM system doesn't take into account negative factors for the purposes of listing trees on the schedule, the consent process was discretionary. Therefore the Committee can take into account the negatives in the weighing up the application to remove the tree.

Aidan Battrick responded to questions from the Committee on the STEM assessment. In respect of the score assigned for rarity, he noted that he used the schedule as the basis for determining frequency and this schedule covers the entire district. He agreed it would be possible for a tree to be frequent in one area but uncommon over the district in terms of schedule listings. He indicated that he was comfortable with the assessment he had made. He noted that pruning or cabling work on the tree would be unlikely to alter the STEM score that he had assigned to the tree.

In response to a question regarding pruning to the boundary to assist with mitigating effects on 10 Kilgour Street and the likely effect on the STEM analysis he noted that it would have an effect on the form. He noted that an application to prune to the boundary would not meet the instant pruning consent approval criteria as he considered that the effects would be more than minor.

In response to questions on removal of the limb that had a higher risk of failure he noted that he agreed with Peter Waymouth that removal of the major limb with the included join would be likely to have a significant impact on the health of the tree. It would make the tree more susceptible to disease.

Processing Planner's Review of Recommendation

Ms Young noted that she had considered the evidence and the submissions at the hearing and she accepted the principal concern for the applicant and the submitter was safety. She acknowledged the high costs of mitigating the risk of limb failure but stated that she wished to maintain her recommendation to decline consent to the proposal. She accepted that the decision was finely balanced.

Applicant's Right of Reply

Mr Smith reiterated that the safety issues for 8 and 10 Kilgour Street were his main concern. Mr Smith considered that pruning would not mitigate these issues in the long term or would affect the health of the tree. He considered that the costs required for the possible mitigation of safety risk by cabling were significant and not reasonable.

He noted that STEM assessment technique does not take into account any negative amenity effects. In regard to the visual aspects to the STEM assessment he noted that the tree was located in a dip and not highly visible. He also noted the advice of his arborist regarding the occurrence of the tree in the area. If these matters are taken into account it would reduce the STEM analysis by 12 points which would bring it below the required level for inclusion on the schedule. This reduction did not take into account the negative aspects of the tree which were significant.

He noted that there were no submissions in support of keeping the tree and that the tree is younger than the dwellings. He requested that the Committee approve the application to remove the tree.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the operative Dunedin City District Plan: 4 Sustainability, 8 Residential Zones, and 15 Trees. Consideration was also given to the objectives and policies of the proposed Second Generation District Plan. Statutory provisions considered included Sections 5, 7(c) and 7(f) within Part 2 of the Act. Regard was also given to the Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions and the principle issues in contention. The main findings on the principle issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken. The Committee inspected the site and the submitter's property. This added physical reality to the Committee's consideration of the evidence presented at the hearing.

*That, pursuant to Sections 34A and 104B and after having regard to Part 2 matters and Sections 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **discretionary activity** being the removal of significant tree T663 on the site at 8 Kilgour Street, Dunedin, being that land legally described as part Lot 2 DP 4723 held in Certificate of Title OT5D/401, subject to the conditions imposed under Section 108 of the Act as shown on the attached certificate.*

Reasons for this Decision

- 1 The Committee accept that the STEM assessment system is somewhat subjective and that the score will vary from practitioner to practitioner as the result of that subjectivity. It noted that one STEM assessment found that the tree was marginally above the 147

threshold for inclusion on the schedule of significant trees and that the other assessment was under the threshold necessary for inclusion on the schedule. It finds that level of significance for Tree T663 is at the lower end of the scale for trees that are listed on the schedule. The Committee appreciated the sincere and considered manner in which expert arboricultural evidence was provided at the hearing.

- 2 The Committee note that the adverse effects of the tree are minor in relation to shading, light penetration, nuisance and property damage at this time, however, the proximity of the tree to dwellings at 8 & 10 Kilgour Street was of concern to the Committee in terms of future growth of the tree and reduced scope for mitigation of adverse effects.
- 3 The Committee accepts advice that the pruning of the tree in the past has resulted in a form that is not entirely typical of the species. It accepts the evidence that there is a risk from an included union on a major limb of the tree. The form of the tree and included union were clearly observed on site.
- 4 It was clear to the Committee that safety is the major issue of concern for the applicant and the submitter in support. It noted that in previous decisions of the Environment Court in relation to trees that safety was an important consideration. It notes that the tree is located close to dwellings and the tree has an identified flaw that increased the risk of limb failure. Removal of the large at risk limb is likely to have a significant adverse effect on the health of the tree. The Committee accepts that mitigation is possible from cabling but that mitigation is not full proof and does not entirely remove the risk of failure. It also comes at a significant cost for the applicant.
- 5 It noted that the tree provided amenity benefit to Kilgour Street and beyond but the Committee considers that its amenity benefit is relatively confined due to its location and topography.
- 6 The Committee considers that the proposal is inconsistent with the objectives and policies of the operative District Plan which are given more weight than the proposed plan. This is to be expected as the framework promotes the protection of significant trees. The proposal is consistent with Regional Policy Statement for Otago.
- 7 The Committee agreed with Ms Young that the matter was finely balanced. The tree provides an amenity benefit beyond the site and had a pleasant appearance from Kilgour Street, but the Committee noted that this amenity benefit was relatively confined. Having weighed the relevant matters the Committee considered that that the risk of limb failure and the significant cost of mitigating the risk were compelling. The close proximity of the tree to dwellings also means that nuisance issues were likely to increase over time as the tree grew and these effects would be difficult to mitigate.
- 8 The Committee has concluded that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Commencement of Consent

As stated in Section 116 of the Resource Management Act 1991, this consent shall only commence once the time for lodging appeals against the granting of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

Right of Appeal

In accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicants.
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.


Please direct any enquiries you may have regarding this decision to John Sule, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Monitoring

Section 35(2)(d) of the RMA requires every council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the nature of your intended activity, this consent will not require an inspection.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. It should be noted that if an inspection is required, then there is the ability to apply charges to cover the cost of this inspections. Often you can reduce the need for an inspection by complying with the conditions of consent in a timely manner and by ensuring on-going compliance with those conditions. Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully



Cr Lee Vandervis
Chair
Hearings Panel

Application Type: Land use Consent

Application Numbers: LUC-2015-507

Location of Activity: 8 Kilgour Street

Legal Description: Part Lot 2 Lot 1 DP 4723 (Computer Freehold Register OT5D/401)

Lapse Date: LUC-2015-507 shall lapse on 14 March 2021.

*That, pursuant to section 34(1) and 104B, and after having regard to Part 2 Matters, sections 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent for a **discretionary activity** being the removal of tree T663, located at 8 Kilgour Street, Dunedin legally described as part Lot 2 DP 4723 held in Computer Freehold Register OT5D/401 subject to the conditions imposed under Section 108 of the Act as shown below.*

1. *The proposal shall be undertaken in general accordance with the relevant details and information submitted with resource consent application LUC-2015-507 received by the Council on 22 October 2015 and the evidence presented at the hearing, except where modified by the following conditions.*
2. *The removal of tree T663 shall be in accordance with arboricultural best practice and undertaken by a suitably qualified person.*
3. *The consent holder shall advise the Council in writing of the date that T663 is to be removed. The written advice shall be provided to the Council at least five (5) working days prior to the removal of the tree.*
4. *All waste generated by the removal works shall not cause a nuisance and shall be suitably disposed of within 7 days of the completion of the removal works.*
5. *The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of T663 shall be limited to the times set out below and shall comply with the following noise limits (dBA);*

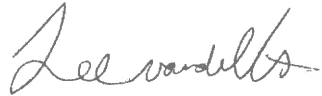
Time Period	Weekdays		Saturdays	
	(dBA)		(dBA)	
	Leq	L _{max}	Leq	L _{max}
0730-1800	75	90	75	90
1800-2000	70	85	45	75

Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise. No work is undertaken on Sundays or Public Holidays nor between 8.00pm to 7.30am Weekdays or Saturdays.

Advice Notes:

1. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
2. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.

3. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
4. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.

A handwritten signature in cursive script, appearing to read "Lee Vandervis".

Lee Vandervis
CHAIRPERSON
HEARINGS COMMITTEE