

22 April 2016

50 The Octagon, PO Box 5045, Moray Place
Dunedin 9058, New Zealand
Telephone: 03 477 4000, Fax: 03 474 3488
Email: dcc@dcc.govt.nz
www.dunedin.govt.nz

CC Otago Ltd
C/- Craig Horne Registered Surveyors Ltd
PO Box 56
Mosgiel 9053

Dear Craig

RESOURCE CONSENT APPLICATION: LUC-2015-578
27 KING STREET
MOSGIEL

The above application for the removal of a listed tree, T666 (*Quercus palustris* – pin oak), at 27 King Street, Mosgiel, was processed on a notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991. The Hearings Committee, comprising Councillors Lee Vandervis (Chairperson), Andrew Noone, and Andrew Whiley, and Mosgiel Taieri Community Board member Bill Feather, heard the application in public on 1 April 2016. The Committee undertook a site visit on 1 April 2016.

At the end of the public part of the hearing, the Committee in accordance with section 48(1) resolved to exclude the public. The Committee has **declined** consent to the application to remove the tree and approved pruning of the tree. The full text of this decision is provided below.

The Hearing and Appearances

The following were in attendance:

The Applicant:

Craig Horne (Director of CC Otago Ltd).

Council Staff:

Lianne Darby (Processing Planner), John Sule (Senior Planner/Advisor to Committee), Jenny Lapham and Andrea Barker (Governance Support Officers), Aiden Battrick (Parks Officer – Trees) and Barry Knox (Landscape Architect).

Submitters

There were no submitters present.

Procedural matters

The Committee discussed the late submission received at Council from Darren Bain. Given that the submission was received approximately one and a half hours after the close of submissions, the Committee accepted the late submission.

Principal issues of contention

The following are the principal issues of contention:

- The appropriateness of retaining the subject tree on the subject site.

Summary of the Evidence Heard

Introduction from Handling Officer:

Summarising her report, **Mrs Darby**, the Processing Planner, noted that the application was for the removal of a tree at 27 King Street. The removal or modification of a listed tree was considered to be an unrestricted discretionary activity in the Dunedin City District Plan. There were no relevant rules in effect under the Second Generation District Plan. Consent to subdivide the subject site into two lots had been issued on 17 December 2015 (SUB-2015-105), but the consent had yet to be given effect.

The applicant sought to remove the tree on the basis that it has outgrown its location and causes significant nuisance and shading. Council officers considered the tree to be healthy, and to benefit the wider community. The tree could be pruned to resolve any issues with power lines. Mrs Darby recommended that the application be declined but that the Council assist with funding for the pruning of the tree.

The Applicants' Case:

Mr Craig Horne presented his written submission and referred to his pre-circulated evidence. He questioned the overall approach of protecting trees in a residential zone where the purpose of the zone is to provide a desirable living environment. The subject tree shaded the existing house, compromising its warmth and access to light. The tree was healthy, but leaf and fruit fall, and the ongoing shedding of twigs and branches was a nuisance. Mr Horne considered the tree to be a risk in high winds, considering the close proximity of the house.

In response to questions from the Committee, Mr Horne described the other vegetation on the property, and the implications for the vegetation from the proposed subdivision and development of the new vacant lot. He discussed the shading effects of the subject tree, noting that the hedge shaded the yard but not the house.

Mr Horne considered that Policy 4.3.7 of the District Plan, regarding giving the community '*... a high degree of certainty as to amenity ...*', was not referring to listed trees but the residential zoning of the land. He had concerns about the Proposed Plan making the removal of listed trees a non-complying activity, as it would be much harder to gain consent. Mr Horne did not consider the community highly valued the subject tree given the lack of response to the notification of the application. He did not see any merit in protecting trees within a residential environment as they could outgrow their sites and become nuisances. The STEM assessments did not include negative impacts in the analysis.

Presentation by Council Staff

Mr Battrick, Council's Parks Officer – Trees, noted that, in regards to the tree being close to power lines, Delta would offer to prune a tree the first time for free, but would require the owner to pay for pruning work thereafter. Mr Battrick was unsure whether or not the subject tree had been pruned by Delta already.

Mr Battrick advised that trees would put energy into vitality rather than growth as they became older. It was difficult to estimate how the subject tree would continue to grow as it was very dependent on the environment, but Mr Battrick suggested that the tree would grow by approximately 30cm per year. It could be pruned to clear the dwelling, and be thinned for light penetration. Removing more than 20% of the tree would, however, place the tree under stress. A reasonable management programme would have the tree pruned once every three years or so, although the longer the time period between prunings, the greater the expense.

Mr Knox, Council's Landscape Architect, stood by his comments in the agenda. He noted that STEM assessments focussed more on community benefits rather than localised amenity. In this case, the local amenity had probably reduced since the original STEM assessment was undertaken in 2001. There would be reduction in access to light and sun, but not until mid-afternoon. Mr Knox believed it was good for the community to have some protected trees.

Handling Officer's Recommendation

Mrs Darby gave a brief summary of the effects and issues relevant to this proposal. She noted that the tree was healthy, and Council's Parks Officer – Trees and Landscape Architect did not support the proposed removal of the tree. Mrs Darby confirmed her recommendation to decline consent.

Applicant's Right of Reply

Mr Horne considered that the assessment was a balancing act. He did not consider the removal of the tree detrimental to the community. Mosgiel still would have nice leafy streets and no one wanted to see a bare suburb, so that situation would not arise. Mr Horne referred to the photograph of the tree in the 2001 STEM assessment, and noted the amount of growth over 15 years. He had concerns for the future if the tree grew at a comparable rate. This was a residential zone, and while Mr Horne liked trees, they needed to be at an appropriate scale for their environment.

Statutory Provisions

In accordance with section 104 of the Resource Management Act the recommending report to the Committee detailed in full the relevant statutory provisions and other provisions the Committee has considered.

These statutory provisions included the following Part II matters of the Act, sections 5(2)(c), 7(c), 7(f) and 7(g). Regard was given to chapters 4: Manawhenua, 5: Land, and 9: Built Environment of the Regional Policy Statement for Otago. As detailed in the recommending report, regard was then given to the relevant provisions of the following chapters of the Dunedin City District Plan, 4: Sustainability, 8: Residential, and 15: Trees, and the following chapters of the Proposed Plan, 7: Scheduled Trees and 15: Residential.

Main Findings of Fact

The Committee considered the evidence heard, the relevant statutory and Plan provisions, the principal issues in contention and the main findings of fact. The main findings of fact have been incorporated within the reasons discussed below.

The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991:

DECISION

*Pursuant to section 34(1) and 104B, and after having regard to Part II Matters and section 104 of the Resource Management Act 1991, the Dunedin City Council **declines** consent to a **discretionary activity** being the removal of the pin oak (T666) located at 27 King Street, Mosgiel, on the site legally described Lot 11 Block IV Deeds Plan 183, held in Computer Freehold Register OT393/55.*

*Pursuant to section 34(1) and 104B, and after having regard to Part II Matters and section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **discretionary activity** being the pruning of the pin oak (T666) located at 27 King Street, Mosgiel legally described as Lot 11 Block IV Deed Plan 183, held in Computer Freehold Register CFR OT 393/55, subject to the conditions imposed under Section 108 of the Act as shown on the attached certificate.*

Reasons for this Decision

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

1. The tree is significant in terms of its contribution to the amenity of the wider area. It is a mature and very good specimen of a pin oak, which can be seen from public viewpoints, especially on King Street. The effects of its removal on the amenity of the wider area cannot be mitigated in a comparable manner.
2. Neither Council's Landscape Architect nor Parks Officer – Trees supports the proposal to remove the tree. The Landscape Architect considers that the tree contributes to the wider amenity, and that it has considerable presence and dominance on the street. The Parks Officer – Tree considers the tree to be a good, healthy specimen which did not present any immediate health or safety problems. No credible evidence was presented that the tree was a safety risk.
3. The removal of the tree will provide greater sunlight to the house on the subject site. However, there is also benefit in shade which the applicant does not identify. The Committee noted that the locating of the house and the tree meant that shading would only occur later in the day. The site is to be subdivided, and new owners are anticipated for both the new lots. These purchasers will note the presence of the tree at the time of purchase, and should be aware of its significance. The applicant/developer was aware of its status prior to purchase of the site.
4. The Committee considered the issues identified by the applicant that have resulted in the application to remove the tree. These included the location of power lines, the dominating scale of the tree, shading and nuisance concerns. The Committee considered that the effects identified were not significant and could be mitigated through pruning and maintenance. Pruning will resolve the lines issue, increase light through the canopy and minimise leaf fall into the guttering of the dwelling.
5. The Committee considered the direction from the Environment Court in the Butterworth case referred to by the applicant in support of the application to remove the tree. The Committee considers there are differences with this application. In this case the Pin Oak is a good specimen whereas the tree in the Butterworth case was not of good form and dominated the entire rear yard. The location of the tree in this case provides for mitigation of its effects by pruning.
6. The Committee also notes that a large walnut tree on the tree schedule was previously removed from the site through a resource consent and another large tree has been removed to make way for a new dwelling. Of these trees the Pin Oak makes the best contribution to amenity values and its location means that it can be retained without significant adverse effects.
7. The Committee considers that pruning of the tree falls within the scope of the application to remove the tree and that it will assist in mitigating the effects of the tree. It has therefore approved the tree being pruning subject to a standard specification.

8. The proposed removal of the tree is inconsistent with most of the relevant objectives and policies of the District Plan.
9. The proposed removal of the tree is considered to be inconsistent with the purpose of the Resource Management Act 1991, which seeks to promote the sustainable management of natural and physical resources.

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 applicant
- 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.

Yours faithfully



Lee Vandervis
CHAIR
HEARINGS COMMITTEE

Consent Type: Land Use Consent

Consent Number: LUC-2015-578

Location of Activity: 27 King Street, Mosgiel

Legal Description: Lot 11 Block IV Deed Plan 183 (held in CFR OT 393/55)

Lapse Date: 22 April 2021, unless the consent has been given effect to before this date.

*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 pruning of T666, located at 27 King Street, Mosgiel legally described as Lot 11 Block IV Deed Plan 183, held in Computer Freehold Register CFR OT393/55 subject to conditions shown below.*

Conditions

1. *Pruning work on Tree T666 shall be for the purpose of canopy thinning, line clearance and removal of deadwood, shall remove no more than 25% of the total canopy and shall be undertaken by a suitably qualified and experienced arborist. The pruning work is to be undertaken in accordance with good arboricultural practice.*
2. *Prior to any pruning work being undertaken a specification of the works is to be submitted to the Council's Arborist to confirm the works are in accordance with good arboricultural practice.*
3. *If necessary a suitable temporary barrier such as a temporary fence, barrier mesh, or 'danger tape' shall be erected on the site while work is taking place to keep pedestrians and other traffic away from falling limbs and debris.*
4. *All waste generated by the pruning works shall not cause a nuisance and shall be suitably disposed of within 7 days of the completion of the pruning works.*
5. *The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the maintenance of T666 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.
5. The Council administer a small fund to assist with pruning costs associated with listed Trees, the applicant is encouraged to contact the Planning Department for further information.

Issued at Dunedin 22 April 2016



Lee Vandervis

CHAIR
HEARINGS COMMITTEE