

TO: Hearings Committee

FROM: Finn Campbell, Graduate Planner

DATE: 20 May, 2025

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2024-460
33 Preston Crescent, Dunedin

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 20 May 2025. The purpose of the report is to provide a framework for the Hearings Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.
- [2] In preparing this report I have relied on the reports and advice provided by Mr William Hagendorn, Eco Tree Care Ltd for the applicant (refer to Appendix 1); Mr Robert Aurik, Building Inspector for the applicant (refer to Appendix 1); Mr Michael Brown, Adams Plumbing (refer to Appendix 1); Mr Luke McKinlay, Dunedin City Council Landscape Architect; Mr Andrew Roberts, Drainage Officer for the Dunedin City Council; and Mr Mark Roberts of Roberts Consulting, consultant arborist to the Dunedin City Council (refer to Appendix 3).

SUMMARY OF RECOMMENDATION

- [3] I consider that the proposal should be declined. But that there is a pathway available to the Committee to consider granting consent.
- [4] I consider that the adverse effects of the proposal will be more than minor, and the proposed drainage works within the Structural Root Zone are incompatible with the health and stability of tree T014. The drainage works are to prevent continued flooding of the adjacent ancillary residential unit. I do not believe that all options to retain the tree have been considered and that this drainage proposal does not meet the threshold of necessitating the removal of T014,
- [5] I consider the application to be inconsistent, but not contrary with the key policy of the Partially Operative Second Generation District Plan relevant to this application. I therefore consider that it is open to the panel to consider granting consent for the proposal.
- [6] The tree is in good health and the policy criteria of Policy 7.2.1.2(c) requires a "*moderate to significant risk to buildings*" in order to support granting resource consent. I believe that Policy 7.2.1.2(c) has been satisfied. I do note that the tree T014 is not posing an immediate danger or threat to the adjacent ancillary residential unit. However, improper drainage for the building resulted in flood damage that has required repairing. The preferred drainage solution cannot be carried out without compromising the health and integrity of T014. I believe the adverse effects of unmanaged stormwater upon the

ancillary residential unit can be considered moderate to substantial in terms of risk to the building. Thus, I consider that the application is inconsistent with, but not contrary to, Objective 7.2.1 and Policy 7.2.1.2 of the Partially Operative Second Generation Dunedin City District Plan (2GP).

- [7] The ancillary residential unit was not always occupied. There is a long and historic relationship between the tree and the building. I consider that this building and its occupation has been lawfully established.

DESCRIPTION OF PROPOSAL

- [8] Resource consent is sought to remove a scheduled tree. The tree is a Native Silver Beech – Tawhai (*Nothofagus menziesii*). The tree is scheduled in the 2GP Appendix A1.3 Schedule of Trees ('the schedule'), identified as T014.
- [9] A copy of the application is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [10] The subject site, 33 Preston Crescent, Dunedin, is legally described as Pt Lot 8 Blk IV DP 444 Held in Record of Title OT212/123 and overall has an area of 913m².
- [11] The site is a rectangular-shaped parcel which comprises an area of 913m². The site gradually slopes up from the road boundary to the primary dwelling which is located on the rear half of the section. There is an ancillary residential unit ("family flat") located in the corner of the northeastern boundary which is directly adjacent to the road and side boundaries. There is some vegetation within the site.
- [12] The scheduled tree T014 is positioned at the centre of the road boundary of the subject site and is located close to the boundary line. The tree's canopy is readily visible from Preston Crescent and is visually prominent in the immediate area. The Council's Consultant arborist report includes photos of the tree and its canopy spread, and general information about the tree species in relation to his assessment of the risks of the tree failing and mitigation options.
- [13] Figure 1 below depicts the location of the subject tree on the site (trunk base circled), relative to the existing dwelling and site boundaries. The ancillary residential unit is approximated by the red rectangle.



Figure 1. 33 Preston Crescent. Ancillary Residential Unit and T014 identified.

- [14] Figure 2 below shows the street profile of the subject Tawhai/Silver Beech tree on the site, relative to the existing ancillary residential unit and road boundary.



Figure 2. View of T014 from northern curb of Preston Crescent.

- [15] Within a radius of approximately 300m of T014 there are seven other scheduled trees:

- T526 – Lancewood
- T524 – Copper beech
- T527 – Copper beech
- T1247 – Weeping elm
- T567 – Copper beech

- T698 – Red beech
- T699 – Red beech

- [16] There are approximately thirteen additional scheduled trees within 500m from 33 Preston Crescent.
- [17] The neighbourhood is well vegetated residential zone. Most sites feature some form of trees and plantings, whilst some have simpler outdoor spaces that are comprised of lawns and landscaping.

BACKGROUND TO THE APPLICATION

- [18] Council records relating to the history of the site preceding 1926 are incomplete. However, it is noted that there is some indication of the former dwelling in the consent application RMA-1979-354082 (GEMS ID RMA80676), “extension to existing garage”. The property record contained in the 1979 application shows a dwelling from potentially 1893 and 1903 and predating the existing dwelling on the site.
- [19] Figure 3. Shows the potential pre-existing dwelling. These pictures are not corroborated by council documentation/records, though that documentation may exist elsewhere¹.



Figure 3. Retrieved from consent application RMA-1979-354082 (GEMS ID RMA80676)

¹ The Hocken Library Collection is indicated on the photographs and likely contains further historic records.

- [20] The current primary dwelling can be confirmed as having been built on site in 1926. The dwelling footprint and exterior is considered generally untouched. There have been internal alterations to this building which are of no relevance to this application.
- [21] Aerial photographs from 1947 show evidence of a tree being established in the location of T014. This is considered likely to be the same tree. The record is shown below in figure 4.

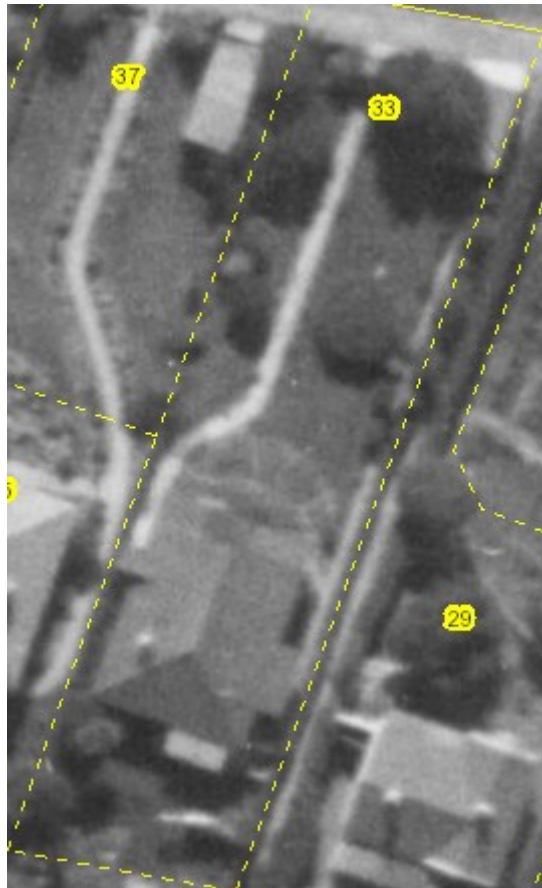


Figure 4. Aerial photograph from 1947. Established tree located in position of T014.

- [22] There is no evidence of a special historic association between the tree and the site. This is a tree with a long history that exceeds at least 80 years on the site. But there is no evidence of a special connection between the tree and the pre-1926 dwelling, nor the subsequent current dwelling. This tree has no specific connection to any persons, building, or location. This is simply a special tree in its own right.
- [23] There have been five previous resource consent applications relating to the tree. These are as follows:
- **LUC-2023-177** – non-notified consent for tree maintenance.
 - **LUC-2017-9** – non-notified consent for tree maintenance.
 - **LUC-2015-87** – non-notified consent for tree maintenance.
 - **LUC-2011-488** – non-notified consent for tree maintenance.

- **RMA-2005-369775 (GEMS ID RMA20057000)** – non-notified consent for tree maintenance.

[24] There have been two further consenting decisions issued for this site.

- RMA-1995-358767 – a certificate of compliance was provided for the additions and alterations to the primary dwelling. Dated 21 July 1995.
- RMA-1979-354082 – consent was granted for the extension to “the garage” (identified in this application as the ancillary residential unit “family flat”), which was effectively “limited notified”. The adjacent tree in the decision (the subject tree of this application T014) was described in the application as notable and worth protecting. This provided part of the basis for the existing family flat configuration as the tree, in part, warranted the rear (not side) extension to “the garage”.

[25] Council records all indicate the lawful establishment of the ancillary residential unit, or the “family flat” which is also recognised in council documentation as a garage and studio. References below to the garage/studio are referring to the ancillary residential unit.

- The original garage appears to be lawfully established in 1943 (H-1943-25024 GEMS ID: AAB19430162).
- The extension to “the garage” was lawfully established in 1979 (RMA-1979-354082, described above).
- A toilet was added to “the studio” in 2017 (ABA-2017-799). This application was subject to a Form 4 (halt to building works) by the planner checking the building consent application. This necessitates a resource consent before any works may be lawfully carried out. The form 4 was triggered by planning rules under the Operative District Plan for works within the dripline of scheduled tree T014.
- The works to create the bathroom was reassessed for planning requirements via amendment PCON-2017-176. The building consent documentation shows the same planner assessing ABA-2017-799 with statements to the effect of: reassessment of the drainage works were found to be outside of the dripline of T014 and that no resource consent was required.
- A kitchen sink was added by building consent ABA-2022-2043. This changed the studio/sleepout into a fully self-contained unit. No resource consent requirements were noted at this time, nor would a resource consent be required to occupy the ancillary residential unit.

[26] I note that recent onsite stormwater drainage works resulted in a stormwater outfall leading to the identified problem area. No council records indicate when exactly it was formed. A site visit confirmed its location and outfall. It is made of new materials and is part of a hard surfaced outdoor area. It was likely finished around or after 2017.

[27] There has been no evidence that the ancillary residential unit has circumvented or failed any authorisations under any current, or historic, consenting regime. This building is considered to be lawfully established.

[28] The occupation of the building as an ancillary residential unit is permitted by the Operative District Plan and the Partially Operative Second Generation District Plan. Both plans treat activities and works within the dripline of scheduled trees in a similar manner. Neither

limit the utilisation of existing situations, but both limit new works. New buildings or structures, or earthworks, or additions and alterations; all would require resource consent if contained within the dripline of a scheduled tree. As this is an existing building there is no limitation for the residential occupation of the building and the land use of the ancillary residential unit is permitted.

STEM ASSESSMENTS

- [29] The accepted score to warrant inclusion in the District Plan tree schedule is 147.
- [30] All trees in the schedule were assessed using the STEM (Standard Tree Evaluation Method) system. This method has three distinct components, being the condition (health) of the tree; the amenity (community benefit) that it provides; and its notability. With regard to assessment of 'condition' and 'amenity', each tree is assessed and allocated points for the following factors:
- (i) Form
 - (ii) Occurrence
 - (iii) Vigour and vitality
 - (iv) Function (usefulness)
 - (v) Age
 - (vi) Stature
 - (vii) Visibility
 - (viii) Proximity of other trees
 - (ix) Role in the setting
 - (x) Climatic influence.
- [31] Items (i)-(v) are in relation to the condition of the tree. Items (vi)-(x) are in relation to the amenity the tree provides. With regard to its notability, points are allocated for recognition factors such as 'feature', 'association', 'commemoration', 'remnant', 'rarity' or its 'endangered' status.
- [32] The points received for each factor are then calculated. Any tree that is allocated a sum total of 147 points or more is considered to be 'significant; and generally worthy of inclusion in the District Plan's schedule of trees. Details of the STEM assessment are included in the Appendix 4.
- [33] Tree T014 received a total STEM score of 168 points in the assessment dated 4 August 1998. T014 was then reassessed on 20 March 2001 which resulted in a score of 156.

2GP AUDIT OF SCHEDULED TREES 2013/14

- [34] During the District Plan review process, most of the significant trees were examined in 2013-2014 by a Council Landscape Architect and a Council Arborist, to see if the trees were still worthy of continued inclusion in the 2GP's schedule of significant trees (Appendix A1.3 *[this appendix is only found in 2GP]*). However, a new STEM assessment was not undertaken in 2013, and the 'assessment' was more akin to a visual audit and

inventory. A photograph of the subject tree is in Council's records from the 2GP audit, and attached as Appendix 5.

ACTIVITY STATUS

- [35] Dunedin currently has two district plans: the Operative Dunedin City District Plan 2006 (referred to in this report as the “2006 Plan”, and the Proposed Second Generation Dunedin City District Plan (the “Proposed Plan”).
- [36] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to section 88A of the Resource Management Act 1991. However, it is the provisions of the district plans in force at the time of the decision that must be had regard to when assessing the application.
- [37] From 19 August 2024, the Proposed Plan became partially operative and almost completely superseded the 2006 Plan except for specific provisions and a number of identified areas that are still subject to appeal. Where these provisions and appeals are relevant, the 2006 Plan must still be considered. Otherwise, the assessment of the application is to be undertaken fully under the Partially Operative Second Generation Dunedin City District Plan (referred to in this report as “the 2024 Plan”). In this case, the relevant rules are not subject to appeal, and accordingly, the 2006 Plan is not relevant to this proposal. Therefore, no assessment of the proposal under the Operative Plan (2006) has been undertaken.
- [38] Plan Change 1 (Minor Improvements) to the 2024 Plan was notified on Wednesday 20 November 2024. Rules that protect areas of significant indigenous vegetation or habitats of indigenous fauna, and that protect historic heritage, have immediate legal effect from notification of Plan Change 1. None of the rules that have immediate legal effect are relevant to this application. The submission period has now closed, and it is known which Plan Change 1 rules are in effect. There are no proposed changes to the land use rules which will be relevant to this application.

Partially Operative Second Generation Dunedin City District Plan “Partially Operative 2GP”

- [39] The subject site is zoned **General Residential 2** and is subject to the following mapped items:
- Variation 2 Mapped Area
 - Scheduled Tree T014
- [40] The proposal falls under the definition of the following City-Wide Activity:
- Scheduled Trees Activities*
- [41] As a result, only the City-wide Activities rules in the Partially Operative 2GP need consideration for this application.
- [42] Rule 7.3.2.3 of the activity status table of the Scheduled Trees Section states that removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree must be assessed as a non-complying activity.
- [43] It is also noted that Rule 7.3.2.1 of the activity status table states that the removal of a scheduled tree that is dead, in terminal decline or with extreme failure, or subject to a court order for removal must be assessed as a restricted discretionary activity. Based on

the assessment of Mr Mark Roberts, the Council's consultant arborist, the condition of the tree is not 'dead, in terminal decline or with extreme failure.' Nor did the applicant's arborist, Mr Hagendorn (Eco Tree Care Ltd), raise any suggestion to the contrary. Therefore, the application cannot be assessed as a restricted discretionary activity.

- [44] The application is therefore assessed as a **non-complying activity** in accordance with Rule 7.3.2.3.

NATIONAL ENVIRONMENTAL STANDARDS

- [45] There are no National Environmental Standards relevant to this application.

NOTIFICATION AND SUBMISSIONS

- [46] Rule 7.4 of the Partially Operative 2GP states that applications for the removal and any other works that will lead to the death or terminal decline of a scheduled tree will be publicly notified.
- [47] The application was publicly notified in the Otago Daily Times on Wednesday 19 of February 2025.
- [48] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal.
- [49] Submissions closed on 19 March 2025.
- [50] Twenty one submissions were received by the close of the submission period. Five submissions were in support of the application and 16 were in opposition. A single late submission was received for the committee to consider.
- [51] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Linda Groenewegen	Oppose	T014 has stood for generations and is one of few examples of mature silver beeches. The tree provides considerable amenity and valuable habitat that is contiguous to the town belt. The amenity it provides will be reduce by its absence. The tree needs proper maintenance.	No
Jennifer and William Black	Oppose	T014 is visually stunning and of extremely high value to the character and amenity of the neighbourhood. T014 is home to Kereru and Tui. The removal of the tree would dramatically decrease our enjoyment of our neighbourhood.	No

		There are only 14 Silver Beech (Tawhai) in the schedule of protected trees and their numbers are in decline.	
Charles Wood	Oppose	Trees like this provide positive impacts on peoples mental and physical wellbeing. Trees of this age are irreplaceable and increasingly rare in built up places due to competing use of space. Branches should be trimmed to reduce risk of tree fall. Well established trees are a habitat for birds, insects, and lizards. The drainage could be rectified by other means than removing the tree. I walk past the tree daily and friends and colleagues have noted this particular tree.	No
Protect Private Ownership of Trees Society (POTS)	Support	T014 is unsuitable for the site as it is too large and overgrown. Its present size and state poses a risk to human health and safety risk to pedestrians. Overhanging branches pose a risk to the immediate environment. Too much tree fall may constitute a fire risk.	Yes
Peter and Sue Connell	Oppose	The dwelling unit was built by the previous owner who knew the tree was protected and the rental should not be an excuse for the present owner to remove the tree. There could not have been any issues with the roots affecting the unit foundations as this would have already been established. Drainage should be remedied by using the natural slope of the land. The tree should be maintained to avoid tree fall.	No
Peter and Jocelyn Frost	Oppose	We are regular visitors to the neighbourhood and we value the visual amenity of the tree and the health benefits it provides. The landowner has removed other trees from their property.	No

		The tree is one of the most attractive features of Preston Crescent. Removal of the tree would degrade the natural environment of a leafy suburban area. We disagree that the rental and the tree are incompatible. Nor do we consider it being an unexpected source of anxiety for occupants. We consider the overhang of the street and footpath to be attractive. Trees of this age will have less vigorous root growth that will not as quickly encroach on the dwelling. The tree is not an impediment to renters. The tree is a generation feature of the area distinguished by longevity which we and our great-grandchildren have directly enjoyed.	
Michael Butchard	Oppose	This is my favourite tree in Dunedin and I would be gutted if it is chopped down. Owners will come and go but this tree will last 500-600 years. The community may lose a beautiful tree for good. The reason to chop down the tree is to enable letting out the garage. I don't support financial gain at the expense of a common good. Alternative solutions need to be found to keep the tree. It was a mistake to convert the garage into accommodation.	No
(Lesley) Annette Carr	Oppose	The tree is not the cause of the land sloping down. The tree does not limit the space for outdoor activities. Tenant should be aware of the tree when they sign an agreement. The cause of the Oct 2024 flooding was due to improper drain maintenance.	Yes

		The risk to health and safety is perceived but not actual. The tree has immense visual value. I purchased my property in part due to the appeal of this tree and installed one-way glass in my bathroom to view the tree. The flat should be warmer now it has a heat pump. It was cold because it was a garage. The financial impact on property owners cannot be justification to remove the tree. The arborists reports all indicate the tree is healthy. There is no evidence the roots are an impact on the building.	
Laurie McNeill	Oppose	The tree is a significant visual and environmental feature of the neighbourhood. This tree is a habitat for birds and wildlife. Many people have tried to encourage supporting native birdlife in the area. The accommodation was provided with the knowledge that the tree might be an issue. The flooding was caused by improper drain maintenance. I support having the tree being properly cared for.	No
Katie Montgomery	Support	This tree has become a safety concern due to its size, location and tree fall. I have concerns for the safety of the property owners and the tenants of the flat. Large branches falling is a concern. The tree creates an unsettling experience during high winds, when it creates cracking and creaking sounds. My children are reluctant to walk under the tree when entering the property.	No

		The decision to remove the tree should not be taken lightly but the risks outweigh the benefits.	
Karla Lawrie	Oppose	The tree is an important part of the visual landscape and removing it would negatively impact the visual environment, the landscape and the environment. The owner bought the property knowing about the tree. The arborist indicates this tree is not a hazard and is in good health. The application to remove the tree is due to flooding but trees help lessen the effects of flooding.	No
Jessica Porter	Oppose	Preston Crescent is a wide road and the tree does not obstruct motorists. The tree is a majestic and visible landmark that has stood for a century. It only limits the applicants financial planning. My niece and nephew adore this tree. I could not easily tell them why a protected tree would be removed. The application to remove the tree is short sighted. All issues with the rental and the tree were foreseeable and should be considered to be the cost of doing business. There should be more outdoor space for the rental elsewhere.	Yes
Helen and Geoff Cartwright	Oppose	The tree is not a danger to the community. The rental floods because it is low lying not because of the tree. Pruning and maintenance of the lower branches would allow more sunlight into the flat. We have lived here for over 30 years and have enjoyed this landmark of a tree. Maintaining the tree is part of our community responsibility.	No
Gerald Scoones	Oppose	The tree is one of the remaining trees in Preston Crescent of maturity.	No

		Removal of the tree would remove a historic vegetative feature. I support pruning and ongoing maintenance of the tree. I have concerns that removing the tree would allow for multi-unit development which would not enhance the area.	
Gareth Montgomery	Support	The tree is a danger to pedestrians or cars. The risk outweighs the benefits of the tree. My family is forced to cross the road to avoid the tree during high winds. The damage to the street and infrastructure will surely worsen should the tree remain.	No
Chas Carroll	Oppose	The tree should not be terminated for the benefit of a landlord. The tree should take precedence over the ability to rent the unit. A prominent aesthetically pleasing and local native tree should not be removed as it is a benefit to the community and birds. Council should consider compensating the previous owners for consenting a dwelling with obvious impediments from the tree.	No
Brett Little	Support	The tree is an eye sore, and it is too large for the space. The tree is causing damage to cars and property. The roots are damaging the dwelling and causing flooding. The tree causes shading which makes the nearby properties cold and damp.	No
Beth and Ben Ryan	Oppose	This tree has stood for generations and forms a major part of our local landscape. Its removal would negatively impact the landscape and the habitat for native birds. The tree is a highlight to our skyline and contributes to our local environment. Its location makes it accessible to our neighbourhood. The owner must take responsibility for the tree.	No

		Our children would be sad if the tree is removed. The tree should be maintained.	
Barry John and Barbara Hansen	Support	The tree should be removed from the property. The tree has outgrown its location and is a risk to the tenants. There is a risk to pedestrian and vehicles. Tree fall has caused damage and is a concern. High winds cause branches to fall onto the road and our property, which has blocked spouting and drains. A branch fell and dented the side panel of my car. The tree is a risk to overhead broadband and power cables.	No
Annette Riley	Oppose	I walk past this tree many times a week and admire the tree for its form and shape. There are few trees which compare with it. The arborist advice should be followed. The tree is in good health and should be maintained in accordance with best practice.	No

[52] The late submission received is found below.

Michael Jameson (received late)	Oppose	Trees are of particular importance in urban areas where they provide substantial visual and environmental impact. T014 is a familiar landmark for commuters and pedestrians. Increasing in-fill development means retaining trees is important for the whole community.	Yes (but unavailable.)
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		T014 is part of an extended link to a bird corridor and trees like this provide shelter and habitat for native birds. There is concern the building is lawfully occupied. The risks to property and people have not been substantiated. The community should not lose a magnificent tree as a consequence of extending the building or using it as an apartment.	
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ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[53] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including-

- a) Any positive or adverse effect; and*
- b) Any temporary or permanent effect; and*
- c) Any past, present, or future effect; and*
- d) Any cumulative effect which arises over time or in combination with other effects– regardless of the scale, intensity, duration or frequency of the effect, and also includes –*
- e) Any potential effect of high probability; and*
- f) Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

[54] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.

[55] In terms of the Partially Operative 2GP, the removal of a scheduled tree that is dead, in terminal decline or with extreme failure, or subject to a court order for the removal is a restricted discretionary activity. In addition, the modification of a scheduled tree is also a restricted discretionary activity, subject to compliance with the 'best arboricultural practice' performance standard.

[56] The Partially Operative 2GP therefore provides no permitted baseline for any form of work on a scheduled tree, or the removal of a scheduled tree, as even in the case of a court

order or emergency situation, resource consent is still required as a restricted discretionary activity.

- [57] In terms of the activities that may take place within proximity of a scheduled tree, the 2GP excludes new buildings, structures, additions and alterations, public amenities, all earthworks, new roads or additions or alterations to roads, network utility activities and site development activities from being carried out within the dripline of a tree, or distance from a tree that is half the height of the tree (whichever is greater). Activities employing trenchless methods (the installation of pipelines and cables below the ground with minimal excavation) are exempt from this 'exclusion zone' if a number of requirements are met, however as a permitted activity this is not considered to have any relevance to the current application.
- [58] Overall, I consider there are no relevant 'permitted effects' in terms of activities that may be undertaken within proximity of this scheduled tree that could feasibly be disregarded when considering the effects of the proposed removal.

Assessment of Effects

- [59] The assessment of non-complying activities contained in Rule 7.8.2 of the Partially Operative 2GP provides useful guidance for this application. Assessment matter 7.7.2.2 in relation to the assessment of restricted discretionary activities determines matters of discretion as the 'effects on amenity.' While matters of discretion are not limited in this case, amenity remains a principal consideration.

Tree Condition

- [60] Council arborist Mark Roberts provided an assessment of the condition of T014. I note he also has provided prior arboricultural assessments for T014. Mr Mark Roberts considers that:
- The tree is looking healthy in terms of vigour and vitality.
 - There is dead wood in the tree, but no more than when the tree was previously assessed between 2020-2023.
 - The tree is in reasonable health and, despite the inadequate cabling, appears structurally sound.
- [61] On the basis of the arboricultural advice received T014 is generally considered to be in good health and no assessment by Mr Mark Roberts, Mr Hagendorn, or Mr Aurik raises any question of the health of the tree, nor of its overall stability.
- [62] I note that the applicant's arborist report affirms that the tree roots are in good health. Mr Hagendorn makes the following statement:
- "The root flare of the tree is present and in good health with no signs of fungal bracket commonly found on mature native beech trees."*
- [63] Mr Hagendorn identifies that at the connection between the two main co-dominant stems there is a building up and trapping of debris as the two limbs grow larger. He notes that there is potential for decay in this area. He did not confirm if any decay has started.
- [64] Mr Hagendorn suggests continued tree maintenance and monitoring every 3-5 years to ensure any changes in the tree condition are identified, particularly after extreme winds.

He considers that a cabling system could be installed to secure the stems and help mitigate risk of large scale limb failure.

- [65] There is no further substantive discussion by either arborist regarding the health of the tree. The tree is in good health and there are no immediate concerns about any major limb failure, although both arborists raise the potential for risk mitigation by cabling.
- [66] I accept the assessments of both arborists and consider that there is no indication that the health of the tree requires further investigation. Some pruning and maintenance will be necessary, but the care required is not unexpected. Tree T014's condition and health is generally undisputed.

Amenity

- [67] 16 submissions were made in opposition to removing T014. Their submissions consistently relate to the visual amenity of the tree.

The consistent theme of the opposing submissions regarding the amenity of the tree is that T014's form, scale, and vitality provide a significant and unique contribution to the visual amenity to the surrounding area. The tree is consistently alluded to as being a notable landmark enjoyed by everyone. Submitters indicated that this tree provided a positive contribution to the natural environment of the neighbourhood. Submitters also indicated that the age and size of the tree is notable and well appreciated by the community.

- [68] Not all scheduled trees will have equal amenity value, and the contribution of any particular tree may change over time as a result of various factors. It is therefore worthwhile to re-confirm the STEM evaluation.
- [69] The Council's Landscape Architect, Mr Luke McKinlay, has reviewed the application and visited the site. He provided the following comments in relation to the potential effects of removing this tree in terms of the existing amenity values of the area and STEM assessment:

Site Context

The site is located west of the town belt, near the intersection of Preston Crescent and Granville Terrace in the suburb of Belleknowes. The surrounding area consists largely of residential properties, which are typically occupied by one or two storey stand-alone dwellings. There are several rear, leg-in sections on both sides of Preston Crescent, between Harcourt Street and Beaumont Road. A wide range of architectural styles are represented in the neighbourhood. Front boundary treatments are varied, including timber picket fences, low masonry retaining walls and hedges.

There are no nearby street trees on Preston Crescent and only two nearby street trees on Granville Terrace (Hoheria sp. And Sorbus aucuparia). In addition to T014, there is a scheduled Lancewood (T526) and two Copper Beech trees (T524 & 527) within a 200m radius on Granville Terrace. The reserve at the eastern end of Preston Crescent and the bush within the town belt also contributes to the "green", well-vegetated character of wider surrounding area.

Comments

I undertook a site visit to the area surrounding the subject tree in January 2025 to determine the likely effect of the removal of T014 on existing visual amenity values and to reassess the existing STEM evaluation. Photographs taken at this time are appended to this memo as Attachment 1.

STEM Assessment and Visual Amenity Comments

There are three main assessment categories to a STEM report – condition (health), amenity (community benefit) and notability (distinction). The condition section is typically assessed by an arborist and the amenity section is typically assessed by a landscape architect. The notability section generally requires written and substantiated evidence to support additional “merit points”.

This memo is restricted to considering amenity related matters.

The 1998 council STEM assessment of T014 resulted in a total “score” of 168. The largest component of this was attributed to the age criteria, where the tree scored 27 (100 years+). Assessment of the condition section of the STEM resulted in a subtotal of 81, the amenity section scored 69, and there were additional notable evaluation points for this tree being a “feature” and more than 100 years old.

My re-evaluation of the 1998 STEM results in some changes to the scoring of the criteria, but confirms the existing sub-total for the amenity section (score of 69), as follows:

- Stature: 15-20m+ (15 points)*
 - Visibility: 2km (3 points)*
 - Proximity: 3+ (21 points)*
 - Role: Moderate (15 points)*
 - Climate: Moderate (15 points)*
-
- The stature of the tree has increased since the 1998 assessment. As identified by the applicant’s arborist, T014 is approximately 17m tall.*
 - It is considered that the visibility of this tree is largely contained to the immediate surrounding neighbourhood (within 500m).*
 - The Silver Beech is clearly the most visually dominant tree in the surrounding streetscape but is part of a small cluster of other nearby smaller trees (group 3+).*
 - The scores for “role’ and “climate” remain unchanged.*

In general, it is considered that due to its stature and front boundary location, T014 forms a prominent natural feature from surrounding locations on Preston Crescent and Granville Terrace. This Silver Beech is the largest, most prominent tree in the immediate surrounding streetscape. It provides a natural counterpoint to surrounding residential built development. As a tree of considerable age, it has likely become a local landmark.

Prior pruning work appears to have occurred within the canopy of this tree to provide clearance around power lines. This detracts somewhat from the aesthetic value of the tree; due to the asymmetry it has created, but these adverse effects are relatively minor. Some support cables have been installed within the tree. There appears to be agreement between the arborists that these cables were incorrectly installed. Whether these are replaced or removed will not have a notable effect on the amenity value of the tree.

It appears from the comments of both arborists that the tree would benefit from maintenance to remove dead and dying branches. This would likely also improve the appearance of the tree. In general, and as confirmed by both arborist's assessment, the tree is in fair health.

In conclusion, this large native tree continues to make a positive contribution to the visual amenity of the street and wider surrounding area. Its removal would have an at least moderate adverse effect on existing amenity values.

- [70] I accept Mr McKinlay's assessment of T014's amenity value and agree that its removal would reduce the contribution that large mature trees provide to the neighbourhood. Nevertheless, I note that these effects would be localised to the area around Preston Crescent. Any public amenity benefits of T014 are largely experienced by people who live nearby but the tree provides a notable contribution to the visual amenity of the surrounding area.
- [71] I agree with Mr McKinley's determination that the removal of the tree would have a moderate adverse effect on existing amenity values. Consequently, I expect that such effects would likely be more than minor on the surrounding neighbourhood.
- [72] I consider that there is no mitigation that would adequately substitute, or offset, for the loss of visual amenity values if this tree is removed.

Health and Safety

- [73] Both arborist reports assessed the potential risk posed by the tree due to limb failure. Neither raised any immediate concerns regarding limb failure.
- [74] Mr Hagendorn considered the possibility of decay and suggested a maintenance and monitoring regime due to the trees age and the build-up between the co-dominant stems. However, he did not raise any pressing concerns.
- [75] Mr Mark Roberts conducted a risk assessment of T014 using two methodologies. A quantitative (numerical) rating (QTRA), and a quantitative (trait-based) rating.
- [76] Mr Mark Roberts calculated the QTRA rating for risk posed by catastrophic tree failure as 1/100000. This rating is considered 'tolerable' but that risk reduction should be considered. Risk reduction should be weighed against the cost of implementing it.
- [77] Mr Mark Roberts assessed that the TRAQ rating for the risk posed by catastrophic limb failure to be 'low' for the next four years. Maintenance could be carried out to maintain a low-risk rating. Risk mitigation is normally recommended within the TRAQ risk rating method.
- [78] I consider the risk associated with imminent or sudden harm to people to be low or negligible. No concerns have been raised by a qualified professional and the potential

threat to human health raised by the application relates to the perception created by the tree rather than any risk that has been substantiated.

Risk to Property

Damage to building.

- [79] It was raised by Mr Hagendorn and Mr Aurik that the root system was lifting the path which is located close to T014 (shown in Figure 5 below). It was also raised as to whether roots were causing damage to the building foundations. Mr Hagendorn suggests a proper root inspection is required to fully understand the extend of any damage to the foundations. This position is affirmed by Mr Aurik. Consequently, Mr M Roberts has altered his position from his initial report and accepts that the root system is probably affecting the foundations at the front of the property.
- [80] I accept these assessments and consider that the roots are likely affecting the building and the natural fall of the ground. I also agree that further investigation is warranted to establish the effects of the roots upon the building foundations.

Flood mitigation/drainage.

- [81] The location of the family flat and the tree has meant both have limited space. The root system has naturally grown to the edge of the family flat. That area where the roots have grown should have a natural flow path that is able to drain any stormwater that may pond there. Inadequate flow paths mean that stormwater does not adequately drain away. Pooling water from a significant rain event can flood the ancillary residential unit and cause property damage.
- [82] The area of concern is shown below by Figure 5.



Figure 5. Area between ancillary residential unit and tree that is proposed to be drained.

- [83] The applicant provided an insurance report following the October 2024 flooding which outlines the cause and extent of the damage.

“Water rushed down the hill and pooled in front of the front door, approximately 40mm of flood water entered the property, however did not reach as far back as the one bedroom. Plasterboard wall linings were checked with a moisture meter and showed high level of moisture up to 200mm, decreasing to 100mm at the rear of the living room.

Moisture readings were taken on the plywood wall linings, these showed to be low in moisture and will further decrease post make safe drying.

Water entered the bathroom, however due to the vinyl sheet carrying on up the wall to the visual effect of skirting, low moisture readings were taken and the bathroom is considered dry.

The kitchen is in good condition, with only minor damage to end panels and toe kicks.”

- [84] I accept this insurance assessment as being an accurate description of the damage.

- [85] The matter of the policy claim is as follows:

“The tenant lives in property however will find temporary accommodation during construction.

Make safe strip out to be completed by contractor.

Drying and decontamination post strip out.

Reinstatement to begin post drying."

[86] I accept this as an accurate description of the insurance claim.

[87] The underwriting issues/concerns were identified as

"There is a large tree on the property which hangs over the insureds roof. The insured mentioned council will not let him trim the large branch back due to the type of tree, however poses a huge risk to the building and life inside.

Concrete tiled roof is covered in moss.

Ground level is above floor level."

[88] I consider this to be a sincere statement by the risk assessor about risk concerns. But I do not consider it to be a statement about the tree that is informed by a qualified arborist.

[89] There is substantiated damage to the ancillary residential unit due to the flooding. This flooding is not a direct result of the tree and the tree itself is not posing any known risk to people or buildings. There is no risk from branches falling, nor is catastrophic limb failure considered likely to happen. The arborist assessments of the tree did not identify any concerns from an immediate or sudden risk. There are no health concerns, and any potential branch failure can be mitigated.

Drainage Solution

[90] The risk posed by the tree could be considered as: forming a stormwater drain may be incompatible with T014's root system. If the drainage works are incompatible with the health of the tree, then the tree may limit the works that would prevent future flood damage.

[91] The applicant's plumber proposed two solutions. A preferred surface sump, and an alternative sump and pump. Mr Mark Roberts affirms that both options would involve excavations within the 2GP dripline/setback for T014 and both would likely compromise the health and stability of T014.

[92] Mr Mark Roberts provided the following further detail regarding the drainage works compromising the root health of the tree:

There are two main 'zones' considered and used when development occurs near existing trees. Those zones are the Structural Root Zone (SRZ) and the Tree Protection Zone (TPZ). The zones of consideration serve to protect the tree and limit the creation of potential hazards.

The relevant standards accepted and used in New Zealand are the Australian Standard: AS 4970 – 2009 Protection of Trees on Development Sites, and the British Standard: BS 5837:2012 Trees in relation to design, demolition and construction.

These zones are radial distances centred off the trunk. The size of the zone is a ratio calculation based on trunk diameter. For scheduled tree T014 the SRZ is a circle extending 4.13m from the trunk and the TPZ is a circle with a radius of 14.4m.

The SRZ is where the structural roots are said to be. Damage to the structural roots could compromise the tree's stability. According to the standards no work should take place inside the SRZ.

An incursion of more than 10% of the TPZ represents a more than minor incursion.

To allow water to drain away from the dwelling one of the two drainage options must be implemented. Due to the relatively shallow fall to the stormwater outlet at the kerb, the pipes cannot be placed under the existing roots."

- [93] Mr M Roberts identifies that both solutions would have an incursion of more than 10% of TPZ and both would likely compromise the health of T014 such that its removal can be considered.

New sump

- [94] The surface water sump is for a 100mm stormwater drainage from the sump to the outlet at the kerb. This option involves trenching between the tree and the ancillary residential unit.
- [95] The surface water pump is the preferred option as the solution aligns with standard building and drainage practices and uses gravity assisted drainage. Both Mr Andrew Roberts and Mr Brown affirmed that this drainage technique aligns with standard building practices.
- [96] I accept Mr Mark Roberts assessment that the proposed sump would compromise the root system of T014.

New pump system

- [97] The new sump and pump system is for a new sump which will collect rainwater which is then pumped into the existing pipe system.
- [98] A pumping system was considered as an alternative solution. I sought the advice of Mr Brown (Adams Plumbing) and Mr Andrew Roberts (DCC drainage) around the use of pumps for stormwater. Their advice was provided by phone calls and note taking, but can be summarised as follows:
- Both state that the use of a sump and pump is non-standard practice, and the preferred stormwater solution is gravity assisted (natural flow paths) and ground contouring.
 - Both state that there would be required maintenance and cleaning to ensure the pump system works. The presence of the tree may require a more than standard cleaning/maintenance regime due to tree fall increasing the chances of blockages.
 - Mr Brown stated that a power failure would mean the pump would fail, which may happen in an extreme weather event.
 - Mr Brown stated that quoted pump would not be able to manage the water volumes for a rainfall equivalent to the October 2024 flood.
 - Mr Brown stated that the provision of a pump does not resolve any natural or secondary flow paths as part of the solution. A pump failure would mean

stormwater would not naturally flow into a drain and water would pond as before.

- [99] I accept their advice on the use of the pump, and on this basis, consider it a wholly unsatisfactory solution. It may be prone to failure and incur ongoing costs in terms of maintenance or repair, if it should fail and the ancillary residential unit floods again. As such, I have concerns that a pump would not resolve the drainage matter, and potentially would not cope in an extreme rainfall event.

Powerlines

- [100] Neither arborist report indicated any concern regarding proximity of branches to the nearby powerlines. There may be future pruning required to maintain the regulated powerline clearance distance if T014 is retained. There is no immediate concern about any risk to powerlines, and there are legislative provisions that allow T014 to be pruned if necessary.

Tree vs Property

- [101] The risk posed by the tree invariably involves the tension between the drainage and flooding of the ancillary residential unit. The presence of the structural root system does constitute a limitation imposed by the 2GP upon the landowner to carry out drainage works within the dripline of T014. This is considered a reasonable limitation (restricted discretionary resource consent) so that people do not carry out earthworks or build new buildings or structures within the Structural Root Zone of a scheduled tree. The situation which would support granting resource consent for buildings, structures, or earthworks would be: *where works avoid damage to the health/integrity of the tree; and the activity avoids future pressure to remove the tree.*
- [102] Preserving the tree is not guaranteed if the proposed drainage solution is implemented. Arborist Mark Roberts went out on site with the applicant's plumber to understand mitigation works. Mr Mark Roberts advised that the proposed drainage works are incompatible with the health/stability of T014.
- [103] If the tree is retained without any mitigation works, then it should be anticipated that there would be continued flooding in the ancillary residential unit if there is substantial/extreme rainfall.
- [104] It is understood that the October 2024 rainfall event did not constitute a regular rainfall event. As a result, I do not consider that the October 2024 rainfall event should provide the basis for expecting how any drainage systems would be able to manage a regular amount of rainfall, or how likely flooding may occur in the ancillary residential unit. It was an extreme weather event and should be treated as such.
- [105] However, extreme weather events should be anticipated at any point again in the future and flooding resulting from extreme rainfall should be avoided where it is reasonable and possible to do so.

Summary of Effects Assessment.

- [106] I consider T014 to be in good health and it poses no immediate risk to people or property.
- [107] I consider T014 to be substantial, noteworthy, and a good quality specimen which provides significant positive benefits to the surrounding area.

- [108] I consider it a reasonable expectation for a landowner to have a property that does not flood or incur unreasonable repair costs when there is extreme rainfall.
- [109] Neither of the proposed drainage solution are compatible with the health and integrity of the root system of T014.
- [110] The day-to-day flood risk to the building has not been fully substantiated.
- [111] Declining this application would require the landowner to seek an alternative solution where the solution may not be satisfactory and future flooding to the ancillary residential unit may occur.

Consideration of Alternatives

- [112] There has been no significant discussion on the consideration of alternatives regarding the retention of this tree. Following the discussions posed by the reports it appears that both of the proposed drainage solutions are incompatible with the root system of T014 and would result in damage to the tree. As such, preferring the drainage system ahead of the tree T014 would necessitate its removal. If the tree is to be retained, this would potentially result in a requirement for additional repairs, in the future if there is extreme weather. Thus far, no report or discussion has provided an alternative maintenance or trimming regime that is able to preserve both the tree and the building.
- [113] Continuing with the status quo may be viable in the short term because the tree currently poses a low risk to people and property. However, damage to the subject property is likely to occur over time and there has not been a solution proposed to mitigate flood damage to the ancillary residential unit without risking tree failure or decline. Tree maintenance work appears to be insufficient in this case to address any likely issues with the stormwater system.
- [114] I do not consider the tree and the building are conclusively incompatible and that alternatives may exist that allow both to coexist in an appropriately mitigated manner. The question remains are these alternatives a reasonable burden upon a landowner?

Positive Effects

- [115] There is no significant public benefit that would ensue if the tree were removed.
- [116] Removal of the tree would allow for a drainage solution for the ancillary residential unit.

Cumulative Effects

- [117] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

“... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration”.

- [118] In this respect, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be ‘cumulative’.

[119] The removal of the tree may in part contribute to cumulative adverse effects. The removal of the tree could cumulatively contribute to the loss of urban trees across the city. In the context of the immediate environment, the loss of the tree could be considered to combine with the loss of other trees in the area to a noticeable extent that would represent a loss of urban tree coverage that is unlikely to be replaced or substituted by an equivalent tree. This is partly offset by the continued presence of trees and vegetation that contribute to a lesser degree to neighbourhood character and amenity.

Effects Assessment Conclusion

[120] After considering the advice of Mr Mark Roberts and Mr McKinlay on the health and amenity values of the tree, and other effects discussed above, I anticipate that there will be localised adverse effects on amenity values that are a more than minor.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

[121] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

[122] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

[123] In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Operative District Plan and the Proposed 2GP were taken into account when assessing the application.

[124] The Proposed 2GP is now at an advanced stage. The zoning and rules of relevance to this application are operative, and the objectives and policies are not subject to appeal. Therefore, the Operative District Plan has been considered superseded and full weight has been given to the objectives and policies of the Proposed 2GP.

Partially Operative 2GP

[125] The following 2GP objective and policies are considered to be relevant to this application:

Scheduled Trees Objectives and Policies

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
-------------------------	--

Objective 7.2.1 The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained.	The proposal is inconsistent with, but not contrary to this objective. If the tree was to be removed, its resulting loss would have a moderate adverse effect on the visual landscape of the neighbourhood. The Preston Crescent area has many trees of varying stature and the neighbourhood features a high presence of vegetation. There are trees and greenery of varying sizes and species that provide amenity to the immediate area. Removal of the tree would result in an irreplaceable loss of a significant tree that could not be substituted. The proposal is in conflict with this Objective, however, as discussed below, Policy 7.2.1.2 provides for removal under certain circumstances, as is a consideration in this instance. Thus, it is concluded that the proposal is not contrary to Objective 7.2.1.
Policy 7.2.1.1 Enable removal of a scheduled tree where they are certified as dead or in terminal decline by a suitably qualified arborist, or where subject to an order for removal in terms of Section 333 of the Property Law Act 2007.	This policy is not considered to be relevant to the proposal given that the tree is not 'dead or in terminal decline,' and nor is there any debate regarding the tree's health and vitality.
Policy 7.2.1.2 Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:	The application is considered to be inconsistent with, but not contrary to this policy.
a. there is a significant risk to personal/ public safety or a risk to personal safety that is required to be managed under health and safety legislation;	I do not consider it has been identified that there is a significant risk to personal or public safety; or a risk that is required to be managed under health and safety legislation.
b. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure;	There is no scheduled heritage building on site.
c. there is a moderate to significant risk to buildings;	I consider that there is substantiated risk to the ancillary residential unit if drainage works are prevented. Drainage works built in accordance with standard building practice are incompatible with the structural root zone of T014.

	The policy requires that there is a 'moderate to significant risk' to buildings. Based on the comments from the Council's arborist, I consider any immediate risk to be low. However, I consider that the potential future risk from flooding meets the threshold of 'moderate' risk to the building.
d. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities;	There is no evidence provided to determine that there is a significant risk of adverse effects on infrastructure or network utilities. This application relates to an absence of appropriate stormwater infrastructure. Risk to powerlines seems to have been managed over the years via pruning and accordingly no significant adverse effects on power lines has been established.
e. removal of the tree will result in significant positive effects in respect of the efficient use of land; or	I do not consider that there has been any question of the efficient use of land in this application and do not consider it relevant to this decision.
X. removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree.	The removal of the tree will not result in significant public benefit that could not otherwise be achieved.

Overall Objectives and Policies Assessment

- [126] The above assessment demonstrates that, overall, there are inconsistencies with the Proposed 2GP significant tree objectives and policies, particularly Policy 7.2.1.2. However, the proposal is not so repugnant with any provision so as to be considered 'contrary' to that provision.
- [127] The Objectives and Policies clearly define the circumstances where the effects from the removal of a scheduled tree are considered acceptable i.e., when a tree is dead or in terminal decline. These circumstances do not apply to the proposal. The question therefore relates to the risk posed by the tree to the adjacent building, and whether the provision of drainage for the building warrants its removal. In this case I consider that there is a potential moderate risk to a building that reaches the threshold under Policy 7.2.1.2.
- [128] I do not consider that the proposed solutions are an exhaustive attempt to prove that the tree must be removed. I consider that the proposal meets the threshold of Policy 7.2.1.2(c) in that it poses a moderate risk to a building on the site. This means the proposal passes the 104D test and that the committee is able to consider granting consent.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [129] It is considered that there is no invalidity, incomplete coverage or uncertainty within the Partially Operative 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104D

- [130] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [131] Overall, I consider that the actual and potential effects associated with the proposed development will be more than minor and the first 'gateway' test of Section 104D is not met.
- [132] Only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104 of the Act.
- [133] In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of the Partially Operative 2GP. In order to be deemed contrary, an application needs to be repugnant, or abhorrent, to the intent of the Partially Operative 2GP and its relevant objectives and policies. It is noted that in this instance, the proposal is assessed as generally being inconsistent with, but not contrary to the relevant objectives and policies of the Scheduled Trees sections of the Partially Operative 2GP. It is inconsistent with Policy 7.2.1.2 of the 2GP. On this basis, I consider that the proposed removal of the tree does satisfy the second 'gateway' test outlined by Section 104D.
- [134] In summary, the application passes one of the two threshold tests of Section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to undertake a full assessment of the application in accordance with Section 104 of the Act. In turn, consideration can therefore be given to the granting of the consent.

Section 104

- [135] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposal on the amenity values of the immediate locality will be moderate, or more than minor.
- [136] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [137] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be inconsistent, but not contrary to the key policy of the Partially Operative 2GP.

- [138] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that given the very specific and localised nature of the proposal, there are no particularly relevant provisions within the Regional Policy Statement for Otago; and that overall the objectives and policies of the RPS have been delivered through the 2GP which has been thoroughly assessed in this report.

Other Matters

- [139] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. For a non-complying activity, this includes the matter of precedent effects, and the integrity of the district plan provisions. Case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined. I consider the proposal could potentially be considered a true exception if it could be shown that all feasible drainage solutions would likely cause irreversible harm to the tree. At this point, I am not convinced that this occurred. The advice to hand suggests that the tree is preventing drainage works for the building which could result property damage that meets the threshold of a moderate risk to buildings; and the retention of the tree could result in undesirable and preventable property damage.
- [140] It is pertinent to note that the removal of any scheduled tree is required to go through this same robust framework of resource consent, and potentially a notified consent process and hearing depending on the circumstances of the tree. In this respect, the circumstances of each such application can be expected to be different and each must be considered on its own merits.
- [141] In this instance there is a case for tree removal to be considered due to the extent to which it limits the provision of adequate drainage for a building that is known to flood and would be expected to flood again if the drainage situation is not resolved. However, all feasible drainage solutions should be considered. In absence of these, it is difficult that the proposal constitutes a true exception and that it will not lead to an undesirable precedent in terms of the Partially Operative 2GP.
- [142] Consequently, I do not consider that it is able to be determined as to whether the proposal represents a challenge to the integrity of the Partially Operative 2GP.

CONCLUSION

- [143] Having regard to the above assessment, I have concluded that the application to allow the removal of scheduled tree T014 at 33 Preston Crescent should be declined.
- [144] This conclusion has been made based on reports from Mr Mark Roberts, Mr Andrew Roberts, Mr McKinley, Mr Brown, Mr Hagendorn, Mr Aurik, and Mr Lasorsa. It is undisputed that T014 is in good health and poses no immediate threat to people or the ancillary residential unit. I accept that a drainage solution should be found for the ancillary residential unit. And I accept that the proposed drainage solution would undermine the health and integrity of T014, such that its survival could not be assured.
- [145] I do not consider that all options to manage the drainage have been exhausted. And, that a standard solution is desirable, but it should not be wholly accepted as the only solution in a non-standard situation. I believe that further investigation is required before the tree removal is accepted as truly necessary.

- [146] I consider T014 to be an exceptional tree that is not required to be removed and that the tree and the building are not grossly incompatible with each other. However, their situation would require a non-standard approach to being resolved.

RECOMMENDATION

- [147] That the application to remove significant tree T014 be declined. However, the committee has a pathway to consider granting consent.

REASONS FOR RECOMMENDATION

- [148] I consider that the likely adverse effects of the proposed activity will be moderate or more than minor at a local level, particularly in terms of amenity value.
- [149] I consider that the proposed drainage works will compromise the roots of the tree. But I do not consider that all possible drainage solutions have been exhausted.
- [150] I consider that the ancillary residential unit is lawfully occupied but its occupation has induced demand for removing the tree.
- [151] I consider the proposal is not contrary with the overall objective and the relevant policies in the Partially Operative 2GP.
- [152] I consider additional advice in regard to all feasible drainage solutions would be needed before a conclusion is made as to whether the proposal represents a 'true exception' that would not undermine the integrity of the Partially Operative 2GP.
- [153] Overall, I consider that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991, which is to promote the sustainable management of natural and physical resources.
- [154] Should the Committee decide to grant consent I have included a set of recommended conditions at Appendix 6.

Report prepared by:



Finn Campbell
Graduate Planner

20 May 2025

Report checked by:



Jeremy Grey
Senior Planner

Date 20 May 2025

APPENDIX 6:

DRAFT CONDITIONS

1. The proposed activity must be undertaken in general accordance with the information provided with the resource consent application received by the Council on XX MONTH YEAR; except where modified by the following conditions.
2. *The removal of the tree must be undertaken by a suitably qualified person and in accordance with arboricultural best practice.*

Conditions to be met prior to site works commencing

3. *The consent holder must supply to the Council at rcmonitoring@dcc.govt.nz in writing at least five (5) working days prior to the works commencing the following information:*
 - a) *The contractor who will be undertaking the works including the contact details of the contractor;*
 - b) *The date the tree is to be removed.*
3. *Prior to commencement, the consent holder must obtain any necessary permit or 'close approach' consent from the network utility operator responsible for the powerlines adjoining the site.*

Conditions to be met at commencement of, or during, site works

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 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

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

Advice Notes:

General

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. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
3. 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.
4. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.