



12 July 2022

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Dear Frank and Valerie

RESOURCE CONSENT APPLICATION: LUC-2021-665, 110 GLADSTONE ROAD, MOSGIEL

The above application for the removal of a listed tree in the Proposed Second-Generation District Plan (2GP) was processed on a publicly notified basis in accordance with section 95 of the Resource Management Act 1991. The Consent Hearings Committee, comprised of Councillors Cr David Benson-Pope (Chairperson), Christine Garey, and Mike Lord heard and considered the application at a hearing on 9 June 2022.

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.

A site visit was undertaken by the Hearings Committee on Thursday 16 June 2022.

The Committee has **declined** consent to the application on 21 June 2022. The full text of this decision commences below.

The motion to decline consent was a majority decision with Cr Lord recording his vote against the decision of the Committee.

The Hearing and Appearances

The applicants, Frank and Val Wesseling, were present at the hearing and spoke to their application.

Council staff attending were:

Campbell Thomson (Advisor to Committee), Caleb Park (Processing Planner), Wendy Collard (Governance Support Officer), Luke McKinlay (Landscape Architect), Mark Roberts (consultant arborist).

One submitter attended the hearing being Mr Jim Moffat.

Procedural Issues

Councillor Benson-Pope advised that he had two scheduled Totara trees on his property. Crs Garey and Lord agreed that there was no conflict of interest.

Principal Issues of Contention

The principal issues of contention are as follows:

- Whether or not the proposal to remove the listed tree (T499 in Schedule 25.3) is contrary to relevant policies and objectives in the 2GP.



- The degree, if any, to which the exception criteria in Policy 2.4.1.2 supports removal of the tree.
- The health of the tree and the degree to which any indications of adverse health might compromise the future of the tree and thereby support removal of the tree.
- The extent to which the landowner's efficient use of the land is enhanced (by being able to build a shed close to the location of the tree) if the tree is removed.

Summary of Evidence

Introduction from Processing Planner

The Planning Officer (Caleb Park) spoke to a summary of his report, giving an overview of the proposal before commenting on the notification of the application and the submissions received. Mr Park advised that the adverse effects of the removal of the tree on residential amenity within the immediate environs would be minor.

Nevertheless, Mr Park mentioned that the proposal would be contrary to key Objectives and Policies in the 2GP, particularly Policy 7.2.1.2 which seeks in general to "avoid the removal of a significant tree" but subject to several exceptions.

The Applicant's Case

Mr and Mrs Wesseling spoke to their application outlining their reasons for wanting to remove the tree. These principally related to their desire to better utilise the Gladstone Road North frontage of the property by building a three-car garage near the current location of the tree. They noted the extensive drip line of the Wellingtonia and the severe limitations this imposed on the use of their property even in relation to future landscaping work. Furthermore, as the tree grew it was their opinion that the tree would impinge on buried services and the Gladstone Road North footpath. As time went on it would become more difficult to remove the tree due to its size, given an annual growth in height of some 0.6m (it is currently 41.5m tall).

Shading impacts on their home by the Wellingtonia were also mentioned by the Wesselings. They noted how much lighter their home was with the recent removal of several unlisted oak trees near the Gladstone Road North frontage of their property.

Evidence of Submitters

On behalf of the Protect Private Ownership of Trees Society, Mr Jim Moffat tabled and spoke to the society's submission.

Mr Moffat argued that the applicants should be able to remove the listed tree. He also made the point that the society was opposed to current owners not being allowed to remove trees from land they own and that this is a dilution of their private property rights.

Five other submissions were received as a result of public notification but none of these submitters were present at the hearing and all had indicated in writing that they did not wish to be heard.

Council Officers' Evidence

Landscape Architect (Luke McKinlay) had nothing further to add to his memorandum of 7 December 2021.

The Consultant Arborist (Mark Roberts) in responding to questions from the Committee made comment that the original STEM assessment of 174 points was still relevant and that the tree would score at least the same at the present time. (Trees were not deemed significant and listed in the old Operative Dunedin District Plan unless their STEM score was at least 147 points).

Processing Planner's Review of Recommendation

Mr Park confirmed his recommendation that the application to remove the Wellingtonia tree be declined on the basis of the evidence presented at the hearing.

With respect to Policy 7.2.1.2, which seeks to avoid the removal of scheduled trees, the only relevant exception criteria in Mr Park's view is clause e. which allows tree removal where significant positive effects accrue with respect to the efficient use of the land (in this case a garage/hobby shed proposed by the applicant). This alone is not sufficient to recommend removal of the tree.

Applicants Right of Reply

The Wesselings reiterated the significant positive effects on their health and wellbeing and flexibility in using their property if the Wellingtonia was removed.

They made the point that no submissions against removal of the tree had been received by Council and asked that the Hearings Committee grant approval 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 and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan (2GP): 7 Scheduled Trees, 2 Strategic Directions.

Main Findings on Principal Issues of Contention

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions, the principal issues in contention. The main findings on the principal 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 during the public-excluded portion of the hearing, the Committee inspected the site and this added physical reality to the Committee's considerations.

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **declines** consent to a **non-complying activity** being the removal of a scheduled tree located at 110 Gladstone Road North, Mosgiel legally described as Lot 1 DP 520920 (Record of Title 822779).*

As stated on the first page of this decision, the motion to decline consent was a majority decision with Cr Lord recording his vote against the decision of the Committee.

Reasons for this Decision

1. The proposal is contrary to the relevant objectives and policies of the Proposed Second Generation District Plan – in particular Policy 7.2.1.2 .
2. The Hearings Committee was made aware by the processing planner of the history of the site in relation to scheduled trees. Mr Wesseling, as a submitter to Variation 11 asked for the Wellingtonia tree, the subject of this application, to be removed from Schedule 25.3 along with four oak trees some years ago. While the oak trees were removed from the Schedule the Wellingtonia was not. Consequently, the Committee was of the view that the applicant was well versed with the protection surrounding the tree in the Proposed Second-Generation District Plan (2GP). Therefore, in order for a resource consent application to remove the tree to be successful

the applicant would be aware of the need for solid arguments to be advanced with evidence, possibly expert evidence, to support the arguments. The conclusion of the Committee was that this had not been achieved by the applicant and in particular the argument for removal had not been framed within the specific exception provisions of Policy 7.2.1.2 .

3. Evidence was provided to the Committee from Council's Consultant Arborist that the STEM analysis upon which the original scheduling of the tree had been based was still relevant and that a similar score (174 points) would still be achieved by the tree in its present state.
4. Oral evidence was received by the Committee that the tree was not in terminal decline and any miss-shaping of the Wellingtonia was due to nearby mature oak trees, now recently removed.
5. The exception criteria contained within Policy 7.2.1.2 was not met by the application in the opinion of the Committee. The expert opinion of Mr Roberts was a key factor in the Committee coming to this view.
6. A primary element of the application to remove the tree was better utilisation of the front yard to establish a garage/hobby room and to undertake significant landscaping of the yard. It was clear to the Committee that these proposed activities would not be unduly compromised by the location of the Wellingtonia and that there was room to locate the structure clear of the tree and its dripline as determined by the setback criteria in the 2GP.
7. While the Committee acknowledged some positive effects would accrue to the applicant by removal of the tree it was clear that removal of the tree would not result in any significant positive effects to the general public. Similarly, removal of the tree would not result in significant positive effects on the efficient use of the front yard by the applicant. Both these effects categories are mentioned in Policy 7.2.1.2 .
8. Evidence from Council's landscape architect, Mr McKinlay, confirmed that any update of the 2001 STEM assessment would be likely to yield a similar score. Consequently, the tree was deemed to still provide high amenity value to residents and public in the local environs.
9. The policy framework for Scheduled Trees in the 2GP, while seeking to "avoid removing a scheduled tree" does contain specific criteria, which if they apply, may allow a decision maker to grant consent for removal. The Hearings Committee determined that no criteria for removal were met by this proposal.
10. To grant consent in this situation, where the provisions in the 2GP for removal are not met, would lead to an undesirable precedent being set. Council receives a number of tree applications each year and it is clear that decisions on trees are scrutinised by potential applicants and their advisers. In view of this the Committee has been guided by the provisions of the Proposed Second-Generation District Plan and expert advice, in reaching what it believes to be a principled and defensible position, should an appeal to the decision be lodged.

Right of Appeal

Pursuant to section 120(1A) of the Resource Management Act 1991, no right of appeal to the Environment Court against the whole or any part of this decision exists for the following:

- A boundary activity, unless the boundary activity is a non-complying activity.
(Refer section 87AAB of the Act for definition of "boundary activity".)

For all other applications, 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(s).
- 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

A handwritten signature in blue ink, appearing to read 'David Benson-Pope', with a long horizontal flourish extending to the right.

Cr David Benson-Pope
Hearings Chairperson