

TO: Hearings Committee

FROM: Lucy Collins, Planner

DATE: 16 October 2018

SUBJECT: **RESOURCE CONSENT APPLICATION
LUC-2018-367
27 FALKLAND STREET
J A NIELSON AND J L SNOW**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 16 October 2018. The purpose of the report is to provide a framework for the 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.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs 32-78 below, I consider the proposal to remove Significant Tree T442 to have more than minor adverse effects on amenity values; however, I consider these to be acceptable in light of the issues the tree is causing for the property owner; neighbouring property owners; and users of the footpath in front of the property. The tree is damaging property and will continue to do so as it grows larger. It is also dropping needles which are hazardous to pedestrians under certain conditions. The tree is a healthy and attractive specimen but will continue to cause damage and create hazards given its proximity to the front boundary of the property. As a result, I have concluded that the proposal to remove the tree should be granted.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to remove the Himalayan Cedar (*Cedrus deodara*), which is a listed Significant Tree, being Tree Number T442, from the property at 27 Falkland Street. The applicants state that the tree *'is causing significant damage to [their] front retaining wall and path,' and 'in order to repair the wall the tree needs to be removed.'*
- [4] A copy of the application, including reasons for the proposed tree removal, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [5] The site subject to the application is currently legally described as Part Lot 20 Deposited Plan 3652 (OT279-95).
- [6] The site is a 630m² rectangular residential section containing a dwelling, a front and rear garden, and a single car garage. The site sits above street level and slopes gently down towards the street from the rear. The garage forms

part of a concrete retaining wall that runs along the front boundary, with a pedestrian entrance in the eastern corner.

- [7] The trunk of the Cedar subject to this application is located approximately 30cm from the front boundary retaining wall, which is immediately adjacent to the public Falkland Street footpath. It is approximately 40cm from the concrete footpath which leads up to the entrance to the dwelling, which is about 10m away from the tree. The canopy extends over the property boundary into the Falkland Street road reserve.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [8] The dwelling and garage on the subject site were constructed around 1937. Various other minor extensions and alterations have occurred since then, however none of these are considered relevant to this application.
- [9] Council records show that work was undertaken on the tree in 2005, which included crown raising and cleaning, and powerline clearance (RMA-2005-369805). No further details of this work could be found.

ACTIVITY STATUS

- [10] Dunedin currently has two district plans: the Operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both District Plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.
- [11] 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. It is the provisions of both District Plans in force at the time of the decision that must be had regard to when assessing the application.

Dunedin City District Plan

- [12] The subject site is zoned **Residential 1** in the Operative Dunedin City District Plan. Falkland Street is identified as a Local Road in the Plan's Roading Hierarchy.
- [13] Restrictions on the removal or pruning of trees is limited to a specific list of trees included as Schedule 25.3 in the Operative District Plan. All trees listed in the Schedule have been assessed using the STEM (Standard Tree Evaluation Method). The STEM score of this tree determined that it warranted specific protection.
- [14] The STEM has three assessment components: the *condition* (health) of the tree; the *amenity* (community benefit) that the tree provides; and its *notability*. With regards to the 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

Items (i)-(v) are in relation to the *condition* of the tree. Items (vi)-(x) are in relation to the *amenity* the tree provides.

In regards to its notability, points are allocated for recognition factors such as *feature, association, commemoration, remnant, rarity, endangered* etc.

- [15] The points received for each factor are totalled. Any tree that is allocated a sum total of 147 points or more is considered to be 'significant' and generally worthy of including in the Operative District Plan's Schedule of Trees.
- [16] The Himalayan Cedar subject to this application received a total score of 150 points in the STEM assessment. This assessment was undertaken in 2001. The tree received particularly high scores for its form, function, and proximity (being solitary and therefore standing out from other trees). No formal reassessment of the tree has been undertaken since then.
- [17] The removal or modification of any tree; or pruning, trimming or any other modification or activity within the canopy spread of any tree listed within Schedule 25.3 of the Operative District Plan is a **discretionary activity** in accordance with Rule 15.5.1.
- [18] As such, the removal of this tree is a discretionary activity and resource consent is required.

Proposed Second Generation Dunedin City District Plan (Proposed 2GP)

- [19] The Proposed 2GP was notified on 26 September 2015. The 2GP zoning maps indicate that the tree's protection will carry through to the new plan with the same identifier (T442). Activity Status Table 7.3.2 – *Scheduled Trees* states that the removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree is considered a non-complying activity.
- [20] At the time of the writing of this report, none of the relevant Proposed 2GP provisions have been given effect to or made operative; however, at the time of the hearing and the committee deliberation, provisions will have been given effect to. Consequently, I have not had regard to the rule provisions of the Proposed 2GP as part of the assessment of this application, but equal weight has been placed upon the objectives and policies of both plans. This is because the Proposed 2GP provides for a balanced assessment of issues that may affect the retention of significant trees.
- [21] Overall, the application is considered to be a **discretionary activity**.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES")

- [22] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations

2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

- [23] It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the proposal.

NOTIFICATION AND SUBMISSIONS

- [24] No formal written approvals were submitted with the application; however a letter of support was included in the application from Mark Seymour of 29 Falkland Street in the form of a letter addressed to City Planning. In summary, the letter provides the following reasons for supporting the application:

- The tree is too large to be located next to a retaining wall.
- The tree already caused damage to his garden wall which required repair work in (approximately) 2007. This work was paid for by the original owners of 27 Falkland Street.
- His sewerage pipes have had to be cleared on several occasions.
- He believes the tree will continue to grow and cause more damage in the future.
- He is concerned about the damage that may occur, should the tree or any branches fall over.
- The tree drops needles and cones which are messy.
- Pollen causes him respiratory problems and settles on parts of the house.

- [25] I consider this as a written affected party approval even though it has not been completed on an official Council Affected Party Approval form. I note that Mr Seymour was invited to submit on the application but did not lodge a submission.

- [26] In accordance with Section 104(3) of the Act, where written approval has been obtained from affected parties, the consent authority cannot have regard to the effects of the activity on that person.

NOTIFICATION

- [27] The application was publicly notified in the Otago Daily Times on 21 July 2018.

- [28] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on 17 August 2018.

- [29] Eight submissions were received by the close of the submission period. All eight submissions were in support, no submissions were opposed and no submissions were neutral.

[30] 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?
Kenneth George Goldfinch	Support	▪ Height of tree causing retaining wall to move and is dangerous should it give way. ▪ Mr Goldfinch is an elderly man with a walking frame and has to cross the road when walking down Falkland Street as the pine needles are slippery, especially if wet. ▪ Mr Goldfinch has lived at 26 Lothian Street since 1960 and knew there would be problems in the future when the previous neighbour planted it.	No
Valda Jean and Neill Reginald Baker	Support	▪ Danger to their garage and car, which are located directly opposite the tree. ▪ Tree is damaging the retaining wall and footpath. ▪ Needles and cones create a mess on the street. ▪ Health problems and cleaning required from pollen. ▪ Loss of sunlight at certain times of the year. ▪ Tree out of character with nearby native foliage. ▪ Further significant growth and impact expected. ▪ Damage to overheard powerlines.	No
Dennis and Jean Margaret Kirkpatrick	Support	▪ Not a native tree. ▪ Poses danger of falling due to pressure on retaining walls. ▪ Repairs can be done and a suitable alternative can be planted in its place. ▪ Liability risks, should at any stage the tree cause problems for the public. ▪ Have had some concern about this tree for some time.	No

Lynette Houston	Support	No specific comment provided.	No
Protect Private Ownership of Trees Society (POTS)	Support	- Too big for suburban site. - Poor form and adds little to street amenity. - Branches growing up telephone pole. - Pushing fence out towards pavement. - Suspect roots have entered sewerage pipes.	Yes
Leslie Williams	Support	- Wrong tree in wrong place. 'Plonked in position' by previous owners and subsequently regretted it. - Views lost to Opoho and North East Valley. - Will continue to get larger and cause more shading and damage. - Unable to be pruned. - Already plenty of large trees in the area. - Moss formed on footpath causing hazard. - Shade prevents frost from thawing causing further hazard. - Pollen causing respiratory problems and coats vehicles parked on road. - Needles make footpath slippery.	No
Russell Douglas Kerr	Support	- Has caused damage and would continue to cause damage. - Sheds needles and pollen.	No
Tristan Sammons	Support	- Not native. - Damaging owner's property. - Will continue to pose risk as it grows.	No

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[31] 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.

Assessment of Effects

(Dunedin City District Plan)

[32] The assessment of effects is guided by the assessment matters in Section 15.6 (Trees) of the District Plan. Accordingly, assessment is made of the following effects of the proposal:

- Effect of Modification (Removal)- Assessment Matter 15.6.1
- Reasons and Alternatives- Assessment Matter 15.6.2
- Amenity Values- Assessment Matter 15.6.3

Effects of Modification & Reasons and Alternatives

[33] The applicant's Assessment of Environmental Effects (AEE) states that the removal of the tree will allow for the repair of the front retaining wall that has been damaged by the tree, and will prevent further damage to the footpath to their house. Removing the tree will mean that the stretch of footpath beneath the tree will no longer be hazardous to pedestrians, who purportedly find it dangerous due to pinecones and slippery needles being dropped from the tree; and the moss that forms in wet/wintry conditions under the canopy. I note that this safety concern is expressed by multiple submitters.

[34] The applicant's AEE does not address the effect that the removal of the tree will have on the ecosystem and ecology of the area. They do, however, believe that because the property is near to the Dunedin City greenbelt, which contains '*significant native trees*', this non-native tree '*does not contribute... functionally to the neighbourhood.*' This statement is not backed up by comment from any suitably qualified professional.

[35] The applicants have not provided an arborist report with their application, however they have included a letter from a structural engineer which states that '*the only long term solution to provide permanent and safe access to [the] property is to have the tree removed.*'

[36] Council's consultant arborist Mark Roberts has inspected the tree and has provided the following comment:

[37] Arboricultural condition assessment and observations:

- a) *The tree was visually inspected from ground level on the morning of July 13, 2018. The inspection took place from outside the property and the weather was clear and calm at the time of the visit.*
- b) *In general, at the time of the assessment, the tree looked to be in good health and have vitality within the normal range for the species and age.*
- c) *The tree was approximately 22 metres tall with a trunk diameter at breast height (DBH, 1.4 metres) of approximately 1.1 metres.*

- d) *The tree had a relatively symmetrical canopy and was branched evenly from about 3.5 metres [image one].*
- e) *Overall, the tree appeared free from defects that would suggest imminent failure and the main branch unions appeared sound.*
- f) *The tree was growing approximately 300mm from the inside edge of front boundary fence and approximately 400mm from the edge of a concrete path leading into the property [image two].*
- g) *The tree sat approximately 700mm above the surface of the footpath, with the front boundary fence effectively acting as a retaining wall for the soil inside the property at that point.*
- h) *The front boundary fence/retaining wall was leaning at about 15 degrees from the vertical (away from the tree, out towards/over the footpath) [image three].*
- i) *Sections of the front boundary fence/retaining wall were cracked and appeared to be partially disconnected.*

[38] *Arboricultural comment in relation to proposed activity as detailed in planning application LUC-2018-367:*

I am in support of the application to remove the tree, but there are some concerning points raised in this application that I believe need to be addressed so the finding of this application does not create a precedent for future applications of trees in similar situations. These are as follows:

- a) *The applicant notes that 'in order to repair the wall the tree needs to be removed.'*
 - i. *To repair and replace the wall with the same materials and same dimensions (i.e. to replace it like-for-like), the tree will need to be removed. I accept the comment, but it would be possible to replace the wall with a different construction (i.e. a pier and beam foundation holding a floating wall) and not remove the tree.*
- b) *The applicant's attached structural engineers report signed by Bruce Chisholm, of Hanlon & Partners Ltd, Consulting Structural Engineers – 2 July 2018. Re: 27 Falkland St, Dunedin Tree [Job No.17909], concludes that 'the only long term solution to provide permanent and safe access to your property is to have the tree removed.'*
 - i. *There are several other solutions that could provide permanent and safe access into the property that [do] not involve removing the tree. These include moving the access point into the property, reconfiguring how the retaining wall is constructed [or] reconfiguring the construction and surface materials of the access path. The tree could even be moved further into the property – I do not believe that this is a financially realistic option, but it is possible, therefore I object to [the] statement put forward by Bruce Chisholm that the 'only long term solution... is to have the tree removed.'*
- c) *The applicant notes that 'the tree does not contribute aesthetically or functionally to the neighbourhood.'*

- i. *This is personal opinion, which is not supported with documentary evidence or made in keeping with requirements and/or definitions outlined in the Resource Management Act (RMA).*
 - ii. *The same can be said for the applicant's second point; that the tree is not in keeping with the surroundings. Again, this is personal opinion; the tree is completely age appropriate for the surroundings, the species reflects the landscaping and botanical selection that would have been used when the neighbourhood was built.*
- d) *The applicant notes that '[the tree] is also a hazard to the public.'*
 - i. *I am a qualified tree risk assessor, approved in two internationally recognised tree risk assessment methodologies; Tree Risk Assessment Qualification (USA) and the Quantified Tree Risk Assessment (UK). The risk posed by T442 to the public would be considered Low As Reasonably Practicable.*
- e) *The applicant notes that 'of most concern... is that it has caused our retaining wall to lean over the public footpath...'*
 - i. *This is a factual statement.*
- f) *The applicant then notes that '... the root system has also cracked our private path to the house.'*
 - i. *There is a high probability that this [the path being cracked by the tree's roots] is the case, although there is no documentary evidence to support this. It is also worth pointing out that there is a good chance that construction of the path has encouraged localised surface rooting and therefore if the path was constructed differently this issue may not exist.*
- g) *The applicant notes that 'due to its size the tree cannot be relocated nor mitigated against.'*
 - i. *Trees of that size and larger have been and can be successfully moved; therefore to say the tree cannot be relocated is incorrect.*
 - ii. *In relation [to] the statement that the tree cannot [be] mitigated against again is incorrect.*
 - o *If [the] applicant's comment relates to the pine needles and pine cones that continuously fall onto the public footpath, then clearly these can be mitigated against because there were no pine needles and cones on the footpath at the time of my site visit.*
 - o *If the applicant is referring to mitigation in the context of writing an Assessment of Environment Effects (AEE), then they have not offered any mitigation options; i.e. they have not provided any options to offset (mitigate) the effect that their proposed action will have on the environment.*

[39] Summary

- a) *As noted at the start of section 2, I am in support of the application to remove the tree.*

- b) *Many of the points raised in application LUC-2018-367 are non-supported and in my opinion appear to be personal opinion.*
- c) *The comment that the tree is hazardous is opinion based, not supported by any formal risk undertaking or expert opinion.*
- d) *In my opinion, the applicant has not provided an Assessment of Environment Effects (AEE) as described in and required by the Resource Management Act (RMA).*
- e) *The applicant has not provided any information as to how they intend to remedy and/or mitigate the visual effects and/or the changes in street character as a result of the proposed tree removal.*

[40] Conclusion and recommendations

- a) *I recommend that the council approve application LUC-2018-367 and allow the applicant to remove significant tree T442 listed on Schedule 25.3 as a Cedar (Cedrus sp.).*
- b) *I recommend that the applicant mitigates the visual effects (to their property) as a result of the proposed tree removal by planting at least two 'size appropriate' trees on their property that reflect the period botanical selection that would have been used when the neighbourhood was built; i.e. Japanese maple (Acer palmatum) or Rowan (Sorbus aucuparia) or a strawberry tree (Arbutus unedo) or similar.*
- c) *I recommend that the applicant mitigates the changes in street character as a result of the proposed tree removal by supplying two Himalayan cedar (Cedrus deodara) to the Dunedin City Council to be planted on Council land in the nearby surrounding area.*
- d) *I recommend that all trees that are planted and/or provided to the Council to mitigate the remove significant tree T442 are supplied from a commercial nursery and are growing in at least a 50-liter grow bag at the time of planting.*

[41] I agree with Mr Roberts' concerns that the applicant has not sufficiently or correctly acknowledged alternatives to removing the tree.

[42] The applicant states that the effects of the removal of the tree will be positive because it is a hazard to pedestrians walking underneath it; it is damaging the front retaining wall; and it '*does not contribute aesthetically or functionally to the neighbourhood.*' I agree somewhat with Mr Roberts' critique of these three arguments. Firstly, he considers the risk of the tree posed to the public to be as low as reasonably possible. I accept this comment on the basis that Mr Roberts is a suitably qualified arboricultural professional. Secondly, while Mr Roberts and I do not have any evidence to suggest that needles and cones cause any considerable hazard to pedestrians, nor that this tree is directly and individually responsible for reported respiratory problems; the applicant and several submitters raised concerns about these hazards, and I therefore consider it in the wider community's best interests to take these hazards into consideration. Thirdly, the tree is a healthy tree that I believe does contribute aesthetically and functionally to the neighbourhood (amenity values are discussed further below).

[43] I respect that the effects of the removal of the tree will be positive for the applicant as it will allow for the repair of the front retaining wall and prevent further damage done to the property. It is highly likely, as pointed out by a

submitter, that the tree was planted haphazardly by a previous owner without much consideration of consequences of its future growth.

- [44] No alternative options were considered by the applicant, and their AEE did not include any weighted argument that suggests they considered retaining the tree or sought professional advice on ways to retain the tree.
- [45] Mr Roberts noted that it would be possible to replace the wall with a different construction method. He is aware that this could be costly and technical, but it is possible. The applicants clearly see the removal of the tree as the only way forward, being the easiest and most cost effective way of dealing with the issues the tree is causing.
- [46] I consider it appropriate to impose conditions [40] b) and d) referred to above as recommended by Mr Roberts, but with some modifications.
- [47] Mr Roberts has not explicitly stated why he considers it necessary to plant two trees, however I suspect that in his opinion two smaller trees are the visual and ecological equivalent to one larger tree. I consider it appropriate to replace the tree with one tree only; as I believe that a replacement tree of a suitable species planted in a suitable location in the front garden of 27 Falkland Street will sufficiently ensure that adverse amenity effects that arise from the loss of the Cedar will be mitigated in the long term. It is necessary to ensure the tree is planted at a reasonable stage of maturity, so the mitigation takes effect as quickly as possible.
- [48] While I would consider it to be ideal for the species planted by the applicants to reflect the time period in which the street was developed, as Mr Roberts suggests (being the 1920s and 1930s); I do not consider it necessary to restrict the applicants to this. A tree from this time period would ensure the tree fits into the established environment in the same way that the Himalayan Cedar did; and would ensure the street retained its cultural and natural heritage. The condition will include recommendations to help guide the applicant but will not limit the applicant to this.
- [49] While I appreciate Mr Roberts' suggestion of having the applicants provide Council with replacement Himalayan cedars to plant on Council land near to the subject site, this may be going beyond what is expected of the applicants. While the tree is an attractive tree and a specimen Himalayan Cedar, I do not consider it to be of so much local or aesthetic value that it needs to be replaced like for like in another location. My primary concern is the loss of the street amenity, which can be mitigated through the planting of a replacement tree on the site.

Amenity Values

- [50] The tree is visible from all of Falkland Street; much of the southern side of Henry Street; properties on the upper eastern side of Chamberlain Street; the first (approximately) 40 metres of the View Park Lane walkway; much of Lothian Street; properties on the south-eastern side of Pollock Street; and properties on the upper slope of Como Street. It is not visible from Drivers Road, except when immediately adjacent to Falkland Street.
- [51] The applicant states in their AEE that the '*non-native cedar tree is not in keeping with the surrounds.*' I disagree with the applicant's assumption that because a tree is not native it does not have amenity value. Many of the trees listed in Schedule 25.3 of the Operative District Plan are not native species but contribute significantly to the amenity, ecological networks, and often cultural and natural heritage, of the City (including several within a 1 km radius of the subject site).

[52] There are several other Himalayan Cedars listed in Schedule 25.3. I particularly note the Cedar at 32 Littlebourne Street (T013) which is an example of a healthy and attractive Cedar growing in a far more suitable location on a residential property than the one subject to this application. T013 is larger than T442 but is much further back from the boundary and is elevated considerably above street level.

[53] Council Urban Designer Luke McKinlay has provided the following comment with particular regard to amenity related matters:

General Comment

[54] *It is my opinion that while T442 retains certain amenity values which contribute positively to Falkland Street, these values must be weighed against the potential adverse effects of the tree on property and health and safety matters.*

[55] *The tree appears to be contributing to the failure of the adjacent retaining wall. It is the professional opinion of the applicant's engineer that the wall will eventually fall onto the footpath. While it is agreed with Mr Roberts that the removal of the tree is not the "only option", as recommended by the engineer, it is likely the most reasonable option, if accompanied by replacement planting of smaller tree species, set back further from the front boundary.*

STEM Assessment

[56] *The amenity component of the STEM assessment considers five factors; stature, visibility, proximity, role and climate. My comments below relate to these factors.*

[57] *The stature of T442 was estimated at between 9-14m at the time of the 2001 assessment. The tree has increased in height since this time and is now approximately 20m tall, which results in an increase in the stature evaluation of 6 points. At its current height, T442 forms a prominent local feature, particularly given its location near the front boundary of this site.*

[58] *The remaining existing STEM ratings appear valid. Site inspection revealed that while predominant views of the tree are largely contained within a 500m radius, the tree is likely to be visible from 1 km. Further, while in the proximity of smaller shrub species, the tree is clearly a solitary specimen and, for this reason, its removal will be highly noticeable.*

[59] *The stature and largely symmetrical canopy of T442 make it a prominent feature of Falkland Street. It provides 'natural' impact and contrast with built development in this residential suburb. It also provides vertical habitat and shelter for birds and other wildlife.*

Concluding Comments

[60] *While I do not agree with the applicant's contention that the tree is not in-keeping with the surroundings, it is agreed that the removal of the tree is acceptable given its apparent contribution to the failure of the adjacent retaining wall if replacement planting is undertaken.*

[61] *While the removal of T442 will result in a highly noticeable change to the streetscape, given its prominent location and vertical form, it is acknowledged that the wider streetscape contains several mature trees, including street trees, which will continue to contribute to the amenity and quality of the surrounding environment. It is agreed with Mr Roberts that replacement planting of at least two smaller trees on this site, further back from the front*

boundary, will also go some way to maintaining wider streetscape amenity values. His suggested replacement tree species - Japanese maple (Acer palmatum), Rowan (Sorbus aucuparia) or strawberry tree (Arbutus unedo) are considered appropriate for this neighbourhood, but the applicant need not be restricted to these.

- [62] I agree with Mr McKinlay's opinion that the tree contributes positively to the amenity of Falkland Street. It is a tall, healthy and attractive tree that can be seen from up to 200m away, depending on the slope.
- [63] I particularly note Mr McKinlay's comment about there being several mature trees, including street trees, which contribute positively to the amenity and quality of the surrounding environment. I agree with Mr McKinlay that the street is an attractive street with a mixture of small and large trees both on the street and on private properties. All of these contribute to the overall look and feel of the street. The applicant also stated in their AEE that the property is near to the greenbelt which *'is an area of significant native trees.'* I acknowledge that the tree is near to the Dunedin town belt (approximately 150m away); however, it is the more immediate street environment that is of concern here.
- [64] Both Mr McKinlay and Mr Roberts have advised that the Cedar should be replaced by at least two trees of a similar species in a more suitable location on the property. While the loss of the tree will be noticeable and will detract from the amenity of the area, I consider it reasonable to impose conditions on the consent requiring only one replacement tree to be planted, as previously discussed. The planting (and future maintenance) of two trees may be going beyond what is required of the property owner in this instance. I consider one tree planted in a more suitable location to sufficiently mitigate against the adverse effects of the loss of the tree in the long term.

Hazards

- [65] Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance.
- [66] The site is subject to a *Seismic - Liquefaction* Hazard. The site is classified as 'Domain A', meaning there is little or no likelihood of damaging liquefaction occurring because the ground is predominantly underlain by rock or firm sediments. Council's consulting engineers, Stantec New Zealand Ltd, have no record of any other hazards affecting this land. Stantec Engineer Edward Guerreiro has provided the following comment in relation to the application:

Discussion:

- [67] *Although this tree is not causing any critical stability issues at present, we agree that the damaged retaining wall will eventually fail. Limiting the root system is the only way to prevent further damage to adjacent structures whilst keeping the tree. However, there are inherent risks in limiting the root system of trees, such as reducing stability in wind, or even killing the tree entirely.*

We recommend that the expert advice of an arborist be sought prior to recommending this action.

Advice:

- [68] *This already-large tree is not yet fully mature and will continue to increase in size, with resulting further damage. There is a large cost and risk to be gained*

from attempting to contain the roots. We agree that, from a stability and hazard point of view, it would be beneficial to remove the tree. It is considered that there are no significant risks from natural hazards that need addressing as part of this application.

- [69] Mr Guerreiro's opinion is consistent with that of Mr Roberts and Mr McKinlay, suggesting that there are possible alternatives to removing the tree but these may be costly and impractical for the applicant/landowner.
- [70] There are no significant risks from natural hazards that need addressing as part of this subdivision. The only issues that Stantec have acknowledged are associated with the tree's effect on adjacent structures, not natural hazards. No conditions or advice notes are considered necessary as a result of this consultation.

Positive Effects

- [71] The removal of the Cedar will allow the owner to fix their retaining wall and footpath.
- [72] A tree planted in more appropriate location on the property will ensure that in the long-term, the amenity and ecological value of the tree is not lost.
- [73] Debris on the street will be reduced, minimising hazards on the footpath for pedestrians.

Cumulative Effects (Assessment Matter 8.13.13)

- [74] 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".

- [75] Similarly, 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'.
- [76] There are not considered to be any adverse cumulative effects arising from this proposal. Future applications for similar activity in the area, beyond that permitted 'as-of-right' by the District Plan, will be assessed as and when they arise and the potential for cumulative effects considered again at that time.

Proposed 2GP

- [77] At time of writing, there are no applicable assessment rules, because the only Proposed 2GP rules that have legal effect currently are ones relating to rural subdivision and the clearance of indigenous vegetation. I note that the proposed zoning for the subject site is **General Residential 1**.

Effects Assessment Conclusion

- [78] After considering the likely effects of this proposal, I consider the amenity effects of the proposed tree removal to be more than minor; however, it is evident that the tree's removal is the most practical way of addressing the issues that it is causing. I also believe that the adverse effects can be

mitigated in the long-term through the planting of a replacement tree in a more suitable location on the property. Given the issues the tree is causing for both the landowner and other residents in the street; and weighing this up against the positive effects that will arise from reinstating the retaining wall and planting a replacement tree; I consider it acceptable in this instance to accept the adverse effects that arise from the loss of the tree.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

[79] 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.

[80] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant. I note that Mr Roberts has recommended an offset, but I do not consider this to be necessary in this instance.

OBJECTIVES AND POLICIES ASSESSMENT

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

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

Dunedin City District Plan

[82] The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

Sustainability Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	I consider the proposal to be contrary to this objective and policy. The tree has been acknowledged as a healthy specimen that contributes positively to the amenity of the Falkland Street area, and it is acknowledged that there will be some loss of amenity values if this tree is removed. This objective and policy considers the amenity values of Dunedin in its broadest sense, rather than specifically this street or the residential zone. When considered at this city-wide scale, and weighed up against the problems the tree is causing the property owners and their neighbours, I do not consider the tree to have so much significance that it needs to be retained at the continued expense and inconvenience of the landowner. This objective and policy
Policy 4.3.1 Maintain and enhance amenity values.	

	does not specifically provide for situations where the loss of amenity values may be acceptable when there may be a positive social and economic impact, or where appropriate mitigation will be required. I believe that mitigating the effects of the loss of the Cedar by planting a replacement tree in a more suitable location on the site will ensure that in the long-term, the amenity values of Dunedin are maintained.
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Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 8.2.1 Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied and mitigated.	This policy and objective relates specifically to the residential zone where the tree is located. I believe the proposal is inconsistent with this objective and policy when considering the amenity values and character of the streets that the tree directly affects. While the tree contributes positively to the area's amenity values and character, I believe that the retaining wall and the quality of the footpath also form part of the streetscape, and are also important in maintaining and enhancing amenity values. Removing the tree is the most appropriate way to ensure the retaining wall is able to be reinstated and won't continue to cause damage to the property or be hazardous to pedestrians. As stated above, the planting of a replacement tree in a more suitable location on the site will ensure that in the long-term, the amenity values of the residential area surrounding the tree are maintained.
Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	

Trees Section

Objective/Policy	Is the proposal consistent with or contrary to the objective?
Objective 15.2.1 Maintain and enhance the amenity and environmental quality of the City by encouraging the conservation and planting of trees.	I consider the proposal to be contrary to these objectives and policies. The Cedar has been identified as worthy of protection as it makes a significant contribution towards amenity and environmental quality. These objectives and policies do not allow for more complicated situations such as this, where the significant tree is having adverse effects on private

Policy 15.3.1 Ensure that landowners and developers are aware of the environmental benefits of trees and encourage them to conserve trees and undertake new plantings whenever possible.	property and the health and safety of the public.
Objective 15.2.2 Protect Dunedin's most significant trees.	The tree is a healthy and attractive Cedar, but it is clear in the assessment in the body of this report that it is causing problems for the owner due to its proximity to the front boundary retaining wall and the adjacent footpaths both on the street and on the property leading up to the dwelling. It is simply a case of the tree being in the wrong location.
Policy 15.3.2 Identify and protect trees that make a significant contribution towards amenity and environmental quality.	While I consider this tree to be a healthy specimen that is significant to the site and the streets immediately surrounding it, I would not consider it to be of particular significance beyond this area. It is not visible from any major roads or public spaces, and it is located in an area where there are several mature trees that contribute positively to the amenity of the area. Provided that the applicant is required to plant a replacement tree on their property; I do not consider the loss of the tree in the long-term to detract from the amenity and environmental quality of the street and the wider area.

Proposed 2GP

- [83] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the Operative District Plan. The following 2GP objectives and policies were considered to be relevant to this application:

Trees Section

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.	I consider the proposal to be consistent with these objectives and policies.
Policy 7.2.1.1 Enable the removal of a scheduled tree where they are certified as being 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.	The tree makes an important contribution to the neighbourhood landscape. The tree is not dead or in terminal decline, and in fact is a healthy tree that is likely to continue to grow into the future.
Policy 7.2.1.2 Avoid the removal of a scheduled tree (except as provided for in Policy	I believe that the tree is a significant risk to personal/public safety and property. Mr Roberts has stated that there is not a significant risk to because of the tree; however it is

7.2.1.1 unless: • There is a significant risk to personal/public safety or property; or • The tree is shading existing residential buildings to the point that access to sunlight is significantly compromised; or • The removal of the tree is necessary to avoid significant adverse effects on public infrastructure; and • These adverse effects cannot be reasonably mitigated through pruning and the effects outweigh the loss of amenity from the removal of the tree.	acknowledged that the tree is directly affecting the stability and integrity of the front retaining wall; and several submitters commented on needles that are dropped by the tree onto the footpath that make the path slippery in certain conditions. This effect cannot be mitigated through pruning; however the issue with the retaining wall could be mitigated through an alternative retaining wall design as noted by Mr Roberts. No alternatives were suggested by the applicant or their engineer. From the applicant's point of view, the effects outweigh the loss of amenity from the removal of the tree. As stated above, I believe the long-term impact of the loss of the tree can be mitigated through the planting of a replacement tree in a more suitable location on the property. I also consider the retaining wall to be an important part of the street amenity as it is directly on the front boundary of the property. I believe that repairing it is important not only for retaining the slope but also for streetscape amenity values.
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Overall Objectives and Policies Assessment

- [85] The above assessment of the relevant objectives and policies in the Operative District Plan and the Proposed 2GP demonstrates that overall, the removal of the scheduled Cedar is contrary to the policy directions of the Operative District Plan, but consistent with those of the Proposed 2GP. While the tree is healthy and attractive, it is causing damage to a retaining wall which also forms part of the street amenity. The tree will continue to grow and cause more damage to the wall and its surrounds. The Proposed 2GP provides for situations such as this where the tree is healthy, but is causing adverse effects on public and private property and is likely to continue to in the future. I consider replacement planting in a more suitable location to appropriately mitigate any adverse effects of the loss of the tree. Both Council's Urban Designer and Consultant Arborist agree that the most appropriate course of action is to remove the tree.
- [86] The activity status of the proposal in the Proposed 2GP is *non-complying*. The rules were not operative at the time this report was written, but will be operative by the time the committee reads this report and the hearing occurs. The objectives and policies relevant to the tree removal in the Proposed 2GP have been given equal weight in regards to the assessment of the activity against the Plan. I have given equal weight because there is a more balanced approach to issues that may arise as a result of significant trees in the Proposed 2GP than in the Operative District Plan. I consider the Proposed 2GP Objectives and Policies to be more sensitive to the variety of reasons why a scheduled tree may need to be removed than the Operative District Plan's Objectives and Policies.

- [87] Having regard to the relevant objectives and policies individually, and considering these in an holistic way, the above assessment indicates that the application is consistent with those provisions.

Assessment of Regional Policy Statements (Section 104(1)(b)(v))

- [88] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. The decisions for the Proposed RPS were released in October 2016. The operative RPS remains in force until the review is completed. Local authorities must have regard to both the operative RPS and the proposed RPS when preparing and changing regional or district plans. Given its regional focus, the regional policy statement does not have a great bearing and has little relevance to the current application.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [89] Environment Court decision A090-2009 (C Butterworth v Auckland City Council) demonstrated that Council was incorrect to base too much emphasis on the retention of the tree when compared to other adverse effects caused by the tree. In paragraph 14 of the decision, Judge Newhook stated that *'the provisions [of the Plan] remain in a form strongly supportive of the retention of trees of greater than certain dimensions, and containing nothing of the flavour of matters raised by Part 2 of the Act, for instance, the health and safety of people, and social and economic wellbeing.'* The appellant won the appeal to allow removal of the tree due to the dominance of the tree on a residential site.
- [90] Several similarities can be drawn between the tree subject to Environment Court decision A090-2009 and the tree subject to this application. In both instances the trees were causing issues for the property owner and neighbours; and the trees were dropping debris that was hazardous to users of the spaces around the trees.
- [91] Key differences between the two trees are that the tree subject to Environment Court decision A090-2009 dominated a rear yard and therefore street amenity was not a factor in the Court's decision. The tree subject to this application is not overly dominant but is poorly located very near to a front boundary and is causing damage to property.
- [92] As discussed above in my assessment against District Plan objectives and policies, I have reached a similar conclusion to Judge Newhook. The provisions of the Operative District Plan do not take into consideration of non-ecological or amenity issues that may justify the removal of a significant tree. The objectives and policies of the Proposed 2GP, which do provide for issues other than just amenity and ecology, have been taken into account.
- [93] In this instance, Council's consultant arborist has provided the expert advice that the tree is not a threat to the health and safety of people; however, there is evidence in the application and in submissions that tree debris is hazardous to pedestrians. Furthermore, the consultant arborist, the consultant engineers and I all agree that alternatives to removing the tree are unlikely to be economically feasible. I consider the best outcome overall, taking into consideration social and economic matters, to be the removal the tree and the planting a replacement tree on the site in a more suitable location.

Section 104

- [94] 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 proposed development overall will be more than minor. In the case of discretionary activities, there is no requirement for effects to be minor or less than minor. The adverse effects are considered acceptable in this instance where the tree is likely to cause ongoing structural damage to property and be hazardous to pedestrians. The adverse effects can be mitigated to a degree provided recommended conditions of consent are adhered to.
- [95] 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.
- [96] 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 contrary to the key objectives and policies relating to the Dunedin City District Plan, but not contrary to those of the Proposed 2GP. The Proposed 2GP provides more adequately for situations whereby an otherwise healthy tree is causing damage to property and/or is hazardous to the public or to property owners.
- [97] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. The regional policy statement does not have a great bearing on the current application. I do not consider it relevant for my assessment of the proposal.

CONCLUSION

- [98] Having regard to the above assessment, I recommend that the application be granted subject to appropriate conditions.

RECOMMENDATION

LUC-2018-367

*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 the **discretionary activity** being the removal of the Himalayan Cedar (*Cedrus deodara*) that is listed as T442 in Schedule 25.3 of the Operative Dunedin City District Plan as a Significant Tree located at 27 Falkland Street, Dunedin, on the site legally described as Part Lot 20 Deposited Plan 3652 (OT279-95), subject to the following conditions imposed under Section 108 of the Act.*

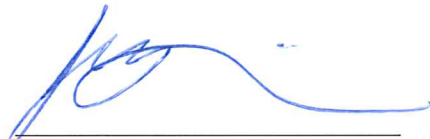
- a) The consent holder must plant a tree in an appropriate location within the front garden of the property. It is advised that the tree species be selected to reflect the period of botanical selection that would have been used when the neighbourhood was established, being the 1920s and 1930s. For example, Japanese Maple (*Acer palmatum*), Rowan (*Sorbus aucuparia*), Strawberry Tree (*Arbutus unedo*) or similar.*
- b) The tree must be planted within one month of completion of the removal of the Cedar (T442).*

- c) *The tree must be supplied from a commercial nursery and must be growing in a bag (at least 50-litres) at the time of planting.*
- d) *The tree must be adequately maintained and in the event that the tree dies, it must be replaced as soon as practicable.*

REASONS FOR RECOMMENDATION

- [99] The effects of removing the tree, although more than minor, are considered to be acceptable in this case as the removal of the tree is the only practical means of resolving ongoing property damage to a retaining wall. A condition requiring the planting of a replacement tree will assist in mitigating the amenity effects on the street in the longer term.
- [100] I consider the proposal to be contrary to the key relevant objectives and policies of the Dunedin City District Plan but not contrary to those of the Proposed 2GP.
- [101] I consider the proposal to be consistent with the objectives and policies of the Regional Policy Statement for Otago.
- [102] Overall, the proposed development has been assessed as not being likely to give rise to adverse effects on those elements of the Residential 1 Zone that the Dunedin City District Plan seeks to protect.

Report prepared by:



Lucy Collins
Planner

16/10/18
Date

Report checked by:



John Sule
Senior Planner

16/10/18
Date