
TO: Hearings Committee

FROM: Kirstyn Lindsay, Consultant Planner

DATE: 5 November 2018

SUBJECT: **RESOURCE CONSENT APPLICATION
LUC -2018-387
27 CRANSTON STREET
KD AND BG HILL**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 5 November 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 report below, I consider that the proposal to remove T358 should be declined unless the adverse amenity effects arising from the tree are demonstrated to be significant and all alternative options to removing the tree have been exhausted.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to remove a significant tree at 27 Cranston Street, Dunedin. The tree is identified a T358- *tilia x eurpoea* (Lime Tree) in Schedule 25.3 of the Dunedin City District Plan. Reasons given in the application for the tree removal includes danger and risk to personal health and safety, property damage and nuisance. An arborist report from Mr Peter Waymouth of Greentrees Limited was submitted in support of the application.
- [4] A copy of the application and supporting arborists report is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [5] The subject site is legally described as Part Sections 3 and 4 Block II Andersons Bay Survey District held in Computer Freehold Register OT280/62 and comprising an area of 737 square metres (m²) more or less. The site is located within a mature low-density suburban neighbourhood. There is a significant amount of mature vegetation in the immediate area.
- [6] The subject tree is large specimen positioned adjacent to the dwelling on the subject site. The age of the tree is estimated as in excess of 80 years old. In 2001, the tree was evaluated using the STEM system adopted by the Dunedin City Council and was awarded 168 points under that system. The tree was included in Schedule 25.3 of the Dunedin City District Plan. When the Second

Generation District Plan (2GP) was notified in November 2015, the tree's inclusion in the Schedule of Trees (now Schedule A1.3) was carried over. No new STEM assessment was undertaken at the time of inclusion in the 2GP.

ACTIVITY STATUS

- [7] Dunedin currently has two district plans: the operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the 2GP). Until the 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.
- [8] 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 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

- [9] The subject site is zoned Residential 1 in the Dunedin City District Plan. The subject tree is identified as T358 in Schedule 25.3 of the District Plan.
- [10] Rule 15.5.1 of the District Plan states that the removal or modification of any tree or pruning, trimming or any other modification or activity within the canopy spread of any tree listed in Schedule 25.3 is a **discretionary** activity.

Proposed Second Generation Dunedin City District Plan (2GP)

- [11] The 2GP was notified on 26 September 2015. The 2GP zoning maps indicate that it is proposed that the subject site be zoned as General Residential 1. The subject tree retains its scheduled status as T358 and is included in A1.3 – Schedule of Trees.
- [12] The removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree is assessed as a non-complying activity pursuant to Rule 7.8.2 of the 2GP.
- [13] The 2GP was notified on 26 September 2015, and some 2GP rules have immediate legal effect. At the time the application was lodged there were no relevant 2GP rules to consider and the activity status of the District Plan is applied.
- [14] Pursuant to S88A of the Act, the application is a considered to be a discretionary activity.
- [15] Notwithstanding the activity status above, the decisions on the 2GP will be released at the time that a decision is to be made on this application and weight will need to be given to those provisions. The assessment undertaken in this report will also address the relevant provisions of the 2GP (as notified) in order to assist the Hearings Panel. The Hearings Panel will need to determine the weighting to be given to the 2GP.

NOTIFICATION AND SUBMISSIONS

- [16] No written approvals were submitted with the application.
- [17] The application was publicly notified in the Otago Daily Times on 18 August 2018. Copies of the application were sent to those parties the Council

considered could be directly affected by the proposal. Submissions closed on 14 September 2018.

[18] Four submissions in support were received by the close of the submission period.

[19] 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?
Peter Wilson – on behalf of Inlet Accommodation Limited	Support	No Comments	No
Allan Hendry	Support	No Comments	No
Jim Moffatt on Behalf of Protect Private Ownership of Trees (POTS)	Support	- The tree is too big for the site and is causing physical damage to the site and neighbouring properties. - STEM assessment is out of date - Applicant's arborist STEM assessment is more accurate - Heritage trees on private properties are socially unjust. - Tree fund should be allocated to the applicant to assist with the removal of the tree.	
Brian John Porter on Behalf of Brian John Porter and Wendy Margaret Knight	Support	- The tree overhangs their property and caused shadowing over the kitchen and lounge. - Large branches of the tree and other material fall into their backyard which has the potential to damage their home or grandchildren - Autumn leaves clog guttering causing repair costs - The roots of the tree have damaged a retaining wall causing it to be compromised. - The roots of the tree grow under their home causing major damage to the plumbing and drainage system which they have had to repair at great cost. - The seed pods which fall from the tree are hard and round creating a fall hazard. - A large number of birds roost in the tree at night introducing bird droppings to the area and creating a health issue.	Yes

		▪ Concerned of safety risk of tree during an earthquake of severe wind event could cause the tree to fall resulting in damage to property and injury.	
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ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[20] 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

[21] 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 assessment of effects of the activity. There are no provisions within the District Plan which provide for the removal of a scheduled tree and, as such, there is no permitted baseline to be applied to this application.

Assessment of Effects

Dunedin City District Plan

Effect of Modification (Assessment Matter 15.6.1)

- [22] It is accepted that the complete removal of the tree will be catastrophic in respect of the condition of the tree. That is, the tree will have no condition value once removed. The question is whether the condition of the tree is of such merit that the effects of the removal will be significant. In 2001, the tree was awarded 87 points in its condition evaluation.
- [23] The applicant submitted an arborist's report by Mr Waymouth of Greentrees Limited in support of the application. Mr Waymouth evaluated the condition of the tree and calculated a Condition Evaluation score of 69 points. For completeness, Mr Waymouth also finds an Amenity Evaluation score of 69 points. Under Mr Waymouth's combined STEM assessment of 138 points, the tree would not be worthy of inclusion in the schedules.
- [24] The tree was also assessed by the Council's Consultant Arborist, Mr Mark Roberts, of Roberts Consulting Limited. Mr Roberts also reassessed the STEM assessment but only provided commentary on the Condition Evaluation of the tree, noting that he is not a landscape architect and is not qualified to assess the amenity values of the tree. Mr Roberts also reduced the Condition

Evaluation of the tree from the score of 87 given in 2001, to 75 Condition points. This score combined with the Amenity Evaluation score of 81 given to the tree in 2001, gives a total STEM assessment score of 156. This score is above the minimum 147 points to be included within the schedule.

- [25] It is noted that both arborists agreed on the occurrence (infrequent) and vigour and vitality (good) scores for the tree, Mr Waymouth gave a higher score for the age of the tree, while Mr Roberts gave higher scores for the function and form of the tree. Mr Roberts identifies where he differs from the 2001 assessment and provides reasons for this difference; noting a re-evaluated age of the tree and a reduced function value of the tree.
- [26] Mr Waymouth applies a notional monetary value rationale to the application of the STEM assessment, noting that *"it serves to restrain the assessor in terms of field/point allocations since the final points score is subject to multiplication factors in a monetary calculation"*. It is unclear if Mr Waymouth's application of the STEM assessment falls within the intended context of the District Plan assessment used by the Council and the Hearings Panel may wish to seek further explanation from Mr Waymouth.
- [27] Overall, the difference in Condition Evaluation scores by both arborists was six points. It is recognised that the scores of 69 and 75 respectively are reduced from the Condition Evaluation score of 87 awarded in 2001. However, the tree did not warrant any scores of 3 (the lowest rating in the criteria evaluation). Given Mr Roberts' clear rationale for the differences from the 2001 assessment, his Condition Evaluation score is adopted for the purposes of this report and it is considered that the tree retains some condition of merit, such that the removal of the tree would have effects which are more than minor.
- [28] In his assessment, Mr Waymouth has also proposed a pruning and cabling option as a method to reduce the residual risk posed by the tree. This option is discussed further below. It is unclear what effect, if any, this work would have on the Condition Evaluation score of the tree and the Hearings Panel may wish to ask the experts for further assessment of this matter.

Reasons and Alternatives (Assessment Matter 15.6.2)

- [29] In order for consent to be granted, the reasons for the removal of the tree need to be fully explored along with any alternative solutions. Both the applicant and submitter, Mr Porter, identify damage caused to the property by the tree including damage to a retaining wall as a result of the tree and also to the foundations of the dwellings.
- [30] Mr Porter also identifies costly repairs that have had to be undertaken to his guttering, and plumbing and drainage, because of damage caused by the tree. No evidence of this damage or evidence of costs was provided with the submission and so it is difficult to determine how much weight to apportion to this evidence.
- [31] Mr Waymouth evaluated the risk posed by the tree using an ISA Tree Risk Assessment form. Mr Waymouth found that the risk posed by the tree was Moderate, identifying that the main concerns were:
 - a) Failure of a main leader at the trunk union,
 - b) The four main and two minor leaders arise low on a large diameter trunk where all exponential forces of southerly gales are concentrated into and through included- bark unions.

- c) Severance of major root in neighbour's property will be directly related to a large dead limb with sapwood fruiting body present.
- [32] Mr Waymouth provides two options for addressing the matters of concern being;
1. Prune to reduce end weight and install cable support system to mitigate potential failure risk associated with the tree. This action would reduce the residual risk of the tree to Low; or
 2. Remove the tree and replant garden to new landscape design with trees and shrubs. This action would also reduce the residual risk to Low.
- [33] The condition of the tree was also assessed by Mr Roberts. Mr Roberts found that the tree appears to be in good health, has a symmetrical canopy and appeared to have a stable root plate. Mr Roberts observed some driveway and path lifting between the base of the tree and the house. Mr Roberts did not identify any defects in the tree which would suggest imminent failure.
- [34] In response to the issues raised in the application, Mr Roberts notes that examples of tree failure given in the application do not provide adequate information to enable a comparison of those situations with the subject tree. Mr Roberts did not observe any damage to the foundations of the dwelling on the subject site and that based on the age of the tree it is unlikely that the root system would actively seek to go under the house in the future. Mr Roberts further notes that regular tree maintenance could reduce the risk of branch fall.
- [35] Mr Roberts questions whether the damage to the retaining wall can be attributed solely to the subject tree as there is other vegetation growing near the wall which could be contributing to the reduced integrity of the retaining wall.
- [36] Mr Roberts also observed that the guttering on 25 Cranston Street was in an advanced state of disrepair and that based on weed growth, considers that this had not been cleared for several years. He considers that it is unrealistic to suppose that all the leaf litter was solely from the subject tree. Mr Roberts notes that any damage caused to guttering to both the subject and neighbouring dwellings, could be addressed by regular maintenance. Mr Roberts' full assessment can be found at Appendix 3 of this report.
- [37] Mr Roberts reviewed the risk assessment undertaken by Mr Waymouth. When assessing the risk posed by the tree, Mr Roberts (a qualified tree risk assessor) found that, using the Tree Risk Assessment Qualification (USA) and Quantified Tree Risk Assessment (UK) methodologies, the risk posed by T358 on people and property was the lowest possible rating that can be generated using the methodology. Mr Roberts considers that Mr Waymouth has erred in his application of the risk assessment and may have inadvertently produced an elevated risk rating. Mr Roberts recommends that Mr Waymouth's Moderate risk rating be revised to Low.
- [38] Mr Roberts accepts that the option proposed by Mr Waymouth to prune to reduce the weight end and install a cable support system would result in the risk posed by the tree being low.
- [39] When faced with conflicting evidence from two experts, it is often difficult to determine which evidence to rely on. In this instance, Mr Roberts had the benefit of reviewing Mr Waymouth's evidence before preparing his assessment. Mr Roberts' assessment is more complete in its rationale. Both

arborists agree that the risk will be low if the pruning and cabling option is selected.

- [40] Mr Roberts assessment is adopted for the purposes of this report and it is considered that the risk from the tree is Low. Furthermore, with regular maintenance and with the implementation of Option 1 put forward by Mr Waymouth, the risk posed by the tree will remain low. Adoption of Option 1 removes the need to remove the tree from the site for health and safety reasons.
- [41] Overall, it is determined that the need for tree removal for health and safety reasons has not been satisfactorily established.

Amenity Values (Assessment Matter 15.6.3)

- [42] When considering amenity values, it is necessary to consider both the amenity of the immediate and neighbouring sites and the contribution the tree makes to the wider environment. The District Plan directs that the Hearings Panel must consider the impact of the proposed work upon the amenities of the locality, and the values of the tree. It is noted that guidance is available to the Hearings Panel in *C Butterworth vs Auckland City Council ENV[2008]*. In that case, Butterworth was able to satisfy the Court that the adverse amenity effects were so significant that removal of the tree was justified. A copy of that Court decision is attached as Appendix 4
- [43] Both the applicant and the submitter, Mr Porter, identify nuisance issues associated with the tree which adversely affect their amenity. The adverse amenity effects identified in the application include sleep deprivation from seed pod drop, fall hazard from seed pods, fear of branch fall, honey dew drop, leaves clogging gutters and creating a slip hazard, bird faeces from roosting birds. In his submission, Mr Porter also identifies shading effects.
- [44] The point at which these issues pass from general nuisance to significant, such that the only option is for the tree to be removed, is not established. I consider that it would be improper of me to make any such assessment without hearing the applicants and submitters firsthand experiences.
- [45] It is noted that there were no submissions received in support of retaining the tree.

It is accepted that shading is a significant adverse effect in Dunedin. It was winter when I visited the property and the tree was bare, so I could not observe any shading effects first hand. It is unclear if pruning of the tree could address the shading issue for the property at 25 Cranston Street and the Hearings Panel may wish to seek further advice on this. It is noted that the issue identified regarding the guttering has been addressed by Mr Roberts in his report and is discussed above.

- [46] In terms of the other effects identified by the applicant and submitter, the Hearing Panel will need to consider the point where the regular and routine property maintenance becomes an unreasonable and onerous burden on the landowners for the benefit of the public. The issue of unreasonable responsibility is a key point made by Mr Moffatt in POTS submission.
- [47] The wider amenity value of the tree was assessed by the Council's Landscape Architect, Mr Luke McKinlay. Mr McKinlay evaluated the tree using the Councils adopted STEM system and made specific assessment against the five criteria of stature, visibility, proximity, role and climate. Mr McKinlay's full assessment is found at Appendix 3 of this report.

- [48] Generally, Mr McKinlay continues to agree with the Amenity Value STEM score of 81 given to the tree in 2001, with the only areas where the score decreased was in the proximity criteria from 27 to 21 giving a total Amenity Value STEM score of 75. Combined with the original Condition Evaluation score from 2001, this would give a score of 162. If Mr Robert's Condition Evaluation is adopted then this gives a combined STEM score of 150, which still would see the tree score above 147 points which is the criteria to be included in the schedules.
- [49] Mr McKinlay considers that given the STEM assessment pass mark, which has been confirmed from an amenity perspective, and the positive assessment of the condition of the tree in the arborist report by Mr Roberts, it is considered that T358 maintains its broader community amenity values and warrants continued inclusion in Schedule 25.3. The removal of this large and prominent tree would have adverse effects on broader amenity values associated with this natural character element and its ability to 'soften' views of the built suburban environment.
- [50] Mr McKinlay's wider amenity assessment is adopted for the purposes of the report and it is considered that T358 retains amenity values which contribute positively to Cranston Street. However, it is also accepted that the adverse amenity effects of the tree experienced by the applicant and submitter are significant in their view, and cannot be lightly dismissed. It is a very finely balanced assessment, but as the more immediate effects and responsibilities fall on the applicant and submitter, if these effects are established as significant by the hearings panel, then more weight should be given to the restoration of the immediate amenity values on the subject and neighbouring sites. That said, I consider that the Hearings Panel should be satisfied that all alternative options, in respect of pruning and other maintenance, have been fully explored.

2GP

- [51] At time of writing this report, the release of the 2GP decisions was imminent. It is expected that the hearing and decision-making process for this application will occur during the appeal period once the 2GP decisions have been released. Once decisions are released, appropriate weight will need to be given to the relevant tree provisions set out in Section 7 of the 2GP. To assist the Hearings Panel, the application has been assessed against the relevant 2GP Rule 7.8.2 (as notified). The weighting attributed to this assessment will depend on the timing of the decision on the application in relation to the appeal period.
- [52] It is noted that the 2GP places a far greater importance on the retention of significant trees, elevating the removal of such trees to non-complying, with a strict set of criteria to be met before the removal of the tree should be considered.
- [53] Rule 7.8.2 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 assessed as a non-complying activity. Rule 7.8.2 provides guidance on how a consent application for the non-complying activity will be assessed, including:
- a) relevant objectives and policies that will be considered as a priority with respect to s104(1)(b)(vi); and
 - b) general assessment guidance, including any effects that will be considered as a priority.
- [54] In this instance, Rule 7.8.2 identifies Objectives 7.2.1 and 2.4.1 and Policy 2.4.1.2 as priority objectives and policies. These objectives and policies will be assessed in the relevant section below.

- [55] Rule 7.8.2(c) seeks to avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:
- i. there is a significant risk to personal/public safety or property; or
 - ii. the tree is shading existing residential buildings to the point that access to sunlight is significantly compromised; or
 - iii. the removal of the tree is necessary to avoid significant adverse effects on public infrastructure; and
 - iv. these adverse effects cannot be reasonably mitigated through pruning and the effects outweigh the loss of amenity from the removal of the tree (Policy 7.2.1.2).
- [56] For completeness, Policy 7.2.1.1 provides for the removal of tree which is dead or in terminal decline and is not relevant to this application.
- [57] In respect of i. above, the arborist report adopted for the purposes of this application found that there was no significant risk to personal/public safety or property and that the risk was as low a rating as could be given under the tree risk evaluation methodology. In addition, the pruning and cabling option will maintain the tree risk as low.
- [58] With regard to ii., it is noted that the application did not identify shading as an adverse effect of the tree. However, the neighbour Mr Porter, did identify shading as an adverse effect. The degree of shading on 25 Cranston Street caused by the tree has not been satisfactorily established at the time of writing this report, such that the access to sunlight is proven to be significantly compromised.
- [59] With regard to iii., there are no adverse effects identified on public infrastructure.
- [60] Finally, in respect of iv., the potential reduction in any shading to 25 Cranston Street from pruning has not been evaluated. Furthermore, both arborists identify a pruning and cabling option which will maintain the tree risk as low.
- [61] Overall, it is considered that, notwithstanding the undetermined shading effects on the property at 25 Cranston Street, the tests set out in Rule 7.8.2(c) are not met and the removal of the scheduled tree should be avoided.

Effects Assessment Conclusion

- [62] After considering the likely effects of this proposal above, overall, it is considered that the application is finally balanced. In my opinion, the removal of the tree will be catastrophic to its condition and, relying on Mr Roberts' evidence, the tree's condition is considered to have some merit. Furthermore, it is considered that the health and safety risks associated with the tree have not been proven and the both arborists agree that there are alternative options to the tree removal in this respect.
- [63] It is accepted that the tree is a large, dominant specimen for the subject site, however, it is the tree's stature and dominance which increases its value to the wider community. It is noted that there were no submissions received in support of retaining the tree. The landscape architect has identified that the removal of this large and prominent tree would have adverse effects on broader amenity values associated with this natural character element.
- [64] In my opinion, the adverse amenity effects experienced by the applicant and submitters should be given more weight than the amenity effects to the wider

community. However, I am uncertain that the adverse amenity effects on the applicant and submitter have been satisfactorily proven as significant within the documentation provided at the time of writing this report. Should the Hearings Panel be of a mind to grant consent, it will need to be satisfied that the extent of the adverse effects are as purported and that all alternative options to mitigate the adverse effects on those parties have been exhausted.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

[65] 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. Offsetting and environmental compensation are not expected to avoid, remedy or mitigate adverse effects but may result in other positive effects.

[66] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant. No offsetting or compensation measures have been identified as appropriate by the arborists or the landscape architect.

OBJECTIVES AND POLICIES ASSESSMENT

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

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

Dunedin City District Plan

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

Objective	Supporting Policies	Commentary
Objective 15.2.1 Maintain and enhance the amenity and environmental quality of the City by encouraging the conservation and planting of trees.	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.	The District Plan recognises that it is important that those with control over trees and who may be focused mainly on the nuisance a tree is causing them are made aware of the value of their trees to the wider community. It is also important that individuals are aware of the ways which negative impacts can be reduced without removing a tree (for example thinning to allow more light through the canopy) and of any positive impacts the tree has on

		their own property. As identified by both arborists, not all options have been exhausted in respect of retaining the tree and in this respect the proposal is inconsistent with this objective and policy suite.
Objective 15.2.2 Protect Dunedin's most significant trees.	Policy 15.3.2 Identify and protect trees that make a significant contribution towards amenity and environmental quality.	While the application identifies closer adverse amenity effects arising from the tree, the tree is identified on the schedule as contributing positively to the wider community. This assessment is considered to still be relevant as the tree has been carried into down into the 2GP. Overall, the removal of the tree would negate the landscape, botanical, cultural and historic values which makes it particularly important to the community. The proposal is found to be contrary to this objective and policy suite.

2GP

Objective	Supporting Policies	Commentary
Objective 2.4.1 Form and Structure of the urban environment The elements of the urban environment that contribute to residents; and visitors aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include (among other things) trees that make a significant contribution to the visual landscape and history	Policy 2.4.1.2 Identify in a schedule (see Appendix A1.3) trees that make a significant contribution to the visual and historical landscape and amenity of neighbourhoods and other places, and use rules to restrict removal or modification of these trees. Identify significant trees based on the following criteria:	Relying on the evidence of the Council's arborist and landscape architect, the tree has been identified as having values of being worthy of inclusion of Schedule A1.3. The risk to personal safety and property has been identified as Low. Overall the proposal to remove the tree has

of neighbourhoods.	a. health and condition of the tree, including: i. vigour and vitality, and ii. age; and b. contribution to the amenity of an area, including: i. occurrence of the species and historic and scientific values, ii. function (usefulness), for example biodiversity supporting or fruit bearing, iii. stature, iv. visibility, v. proximity of other trees, vi. role in the setting, and vii. climatic influence; and c. any potential adverse effects, including: i. risk to safety, and ii. risk of potential damage to existing infrastructure, buildings or structures.	been assessed as contrary to this objective and policy suite.
Objective 7.2.1 The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained	Policy 7.2.1.2 Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless: i. there is a significant risk to personal/public safety or property; or ii. the tree is shading existing residential buildings to the point that access to sunlight is significantly compromised; or iii. the removal of the tree is necessary to avoid significant adverse effects on public infrastructure; and iv. these adverse effects cannot be reasonably mitigated through	The tests set out in this objective and policy suite mirror those set out in Rule 7.8.2(c). As discussed in the section above, the proposal as currently applied for does not meet these tests and the application is found to be contrary to this objective and policy suite.

	pruning and the effects outweigh the loss of amenity from the removal of the tree.	
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Overall Objectives and Policies Assessment

- [69] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is inconsistent with those provisions set out in the District Plan and the 2GP. Weighting given to these objectives and policies will depend on the release of decisions for the 2GP.

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

- [70] Section 104(1)(b)(v) of the Act requires that any relevant regional policy statements be taken into account. The Regional Policy Statement for Otago (RPS) was made operative in October 1998. The purpose of the RPS is to promote the sustainable management of natural and physical resources, by providing an overview of the resource management issues facing Otago and setting policies and methods to manage Otago's natural and physical resources. The following objectives and policies in the RPS are considered relevant:
- [71] **Objective 5.4.3 and Policy 5.5.6** which seek protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development by recognising and providing for the protection of Otago's outstanding natural features and landscapes.
- [72] The Proposed Regional Policy Statement for Otago (PRPS) was notified on 23 May 2015 and decisions were released on 1 October 2016. The PRPS is currently under appeal. The following assessment is undertaken against the PRPS incorporating Council decisions released on 1 October 2016. Specific to this proposal are:
- [73] **Objective 5.2 and Policy 5.2.1(j)** which seek to recognise historic heritage resources, including trees and vegetation are recognised and contribute to the regions character and sense of identity.
- [74] The assessment of effects undertaken above indicates that the proposal is inconsistent with the objectives and policies of the RPS and PRPS.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [75] The *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC38[2014}1 NZLR 593 (*King Salmon*) approach used in *RJ Davidson Family Trust v Marlborough District Council* [2016] EnvC 81 followed the Court's reasoning that in most cases it is not necessary to refer back to Part 2 when determining an application for resource consent. The rationale for this approach was because planning instruments are prepared as a cascade with district plans at the bottom of the cascade. Therefore, unless the district plan, under which the resource consent is being considered, was deemed to be incomplete, invalid or uncertain, is assumed to give effect to the higher order planning documents including regional policy statements, national policy

statements and Part 2 of the Act, and no further consideration of those planning instruments was required.

[76] However, the recent Court of Appeal decision on Davidson (*R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316) confirms that resource consents are expressly subject to Part 2 and that Part 2 is to be considered as well as the other considerations set out in S104.

[77] The purpose of the RMA to promote the sustainable management of the natural and physical resources detailed below:

managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural well being and for their health and safety while:

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations: and*
- (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems: and*
- (c) Avoiding, remedying, or mitigating any adverse effect of activities on the environment.*

[78] The Court's approach, as discussed at paragraph [151] of the *King Salmon* decision, is supported in that Section 5 is not intended to be an operative provision, rather it sets out the RMA's overall objectives. As such, the application will be assessed against the remaining provisions of Part 2.

[79] It is considered that there are no matters of national importance as identified in Section 6 of the RMA which are relevant to this proposal.

[80] In respect of the other matters set out in Section 7, it is considered the following matters are relevant:

- 7(b) the efficient use and development of natural and physical resources:
- 7(c) the maintenance and enhancement of amenity values:
- 7(f) maintenance and enhancement of the quality of the environment:

[81] Overall, it is considered that it is a finely balanced assessment. It is always difficult to weigh the effects on the property owners versus the amenity effects of the wider community. I have noted in paragraph 64 that I consider that effects on owners should prevail if significant adverse effects are present that cannot be mitigated. In this instance, I consider the effects on the property owners has not yet been established as significant and the risk to their health and safety is assessed as low. Without sufficient evidence to establish the health and safety amenity effects on property owners outweighs the loss of wider amenity values, I consider the community amenity values prevail and the removal of the removal tree is found to be inconsistent with section 7 of the Act and with Part 2 overall.

Section 104

[82] 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 removal of the tree will be significant and the

effects on the applicant and neighbour have not yet been adequately established as significant.

- [83] 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 or recommended by the Council experts.
- [84] 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 with the key objectives and policies relating to both the Dunedin City District Plan and contrary to those of the 2GP.
- [85] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is inconsistent with the relevant objectives and policies of the Regional Policy Statement for Otago.

Other Matters

- [86] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. There are no other matters considered relevant to the proposal.

CONCLUSION

- [87] Having regard to the information contained in the application, the evidence from both arborists and the landscape architect, the environmental effects assessment and the policy direction of both plans, I recommend that the application be **declined**.
- [88] However, should the applicant adequately demonstrate the adverse amenity effects arising from the tree are significant and that all alternative options to removing the tree have been exhausted then this recommendation can be revisited.

RECOMMENDATION

*That, pursuant to Section 34A(1) 104 and 104B of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Second Generation Dunedin City District Plan, the Dunedin City Council **declines** consent to a **discretionary activity** being the removal of Scheduled tree T358 on the site located at 27 Cranston Street, Dunedin, legally described as Part Sections 3 and 4 Block II Andersons Bay Survey District (CFR OT280/62), subject to conditions imposed under Section 108 of the Act.*

REASONS FOR RECOMMENDATION

- [89] The adverse effects as stated in the application have not been adequately proven.
- [90] The risk posed by the tree is found to be low.
- [91] Both expert arborists identify alternative solutions to the tree's removal.
- [92] The Council's landscape architect has identified the amenity effect of removing the tree on the wider community will be more than minor.

[93] The proposal is found to be contrary to objectives and policies in the District Plan and the 2GP.

[94] The proposal is considered to be inconsistent with the objectives and policies of the Regional Policy Statement for Otago.

Report prepared by:



Kirstyn Lindsay
Consultant Planner

5/11/2018

Date

Report checked by:



John Sule
Senior Planner

5/11/2018

Date