

15 October 2018

C J Hillier
62 Chambers Street
Dunedin 9010

Via email: chantal.hillier@gmail.com

Dear Chantal

RESOURCE CONSENT APPLICATION:

**LUC-2018-295
62 CHAMBERS STREET
DUNEDIN**

The above application for resource consent to remove a scheduled tree was processed on a publicly notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee comprising of Independent Commissioner Andrew Noone (Chairperson), and Councillors Mike Lord, and Jim O'Malley, heard and considered the application at a hearing held on 11 September and 24 September 2018.

At the end of the public part of the hearing, the Committee, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

Following the conclusion of the initial hearing on 11 September 2018, a site visit was undertaken by the Hearings Committee.

The Committee has **granted** consent to remove tree T303. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant was represented by Chantal Hillier and Peter Waymouth (Consultant Arborist)

Council staff attending were:

John Sule (Committee Advisor), Lily Burrows (Processing Planner), Luke McKinlay (Urban Designer), Mark Roberts (Consultant Arborist at reconvened hearing) and Wendy Collard (Governance Support Officer).

Submitters in attendance included:

Jim Moffat from the Protect Private Ownership of Trees Society (POTS)
Jane Hinkley owner and occupier of 64 Chambers Street (Reconvened hearing)

Procedural Issues & late Submission

No procedural issues were raised. As the Council's consultant arborist Mark Roberts was unavailable at the initial hearing the Committee adjourned the hearing on 11 September 2018 to allow Mr Roberts to be questioned on his arboricultural and risk assessment at the reconvened hearing on 24 September 2018.

A late submission from Tom Osborn was considered by the Committee and accepted under Section 37 of the RMA.

Principal Issues of Contention

The principal issues of contention are as follows:

- The significance of the tree
- The level of the risk associated with the tree
- The utility of mitigation options for addressing the impacts of the tree
- Whether the adverse effects of the tree on the applicant outweigh the amenity values of the tree

Summary of Evidence

Introduction from Processing Planner

Lily Burrows outlined the resource consent application to remove tree T303 and the findings in her report. She made corrections to her report including a minor correction to the STEM review undertaken by Luke McKinlay. Ms Burrows noted that all submissions were either neutral or in support of removal of the tree. She also identified a recent case law change that meant the Committee could consider Part 2 of the RMA when making their decision. She noted that in this case it would be reasonable to do so as the objectives and policies of the operative Plan were unbalanced and did not consider the adverse effects of trees. Ms Burrows outlined to the Committee the differences between the expert arboricultural advice on the tree from Mr Waymouth and Mr Roberts. Ms Burrows recommended that consent be declined.

The Applicant's Case

Chantal Hiller outlined the family connections with the property noting that although she had purchased the site in 2013 her family had a decades long association with the site and she had grown up with the tree. She agreed the tree was attractive and she noted that the family had cared for it over the years including having it cabled and professionally pruned. She considered the tree had become too large for the site and they had come to a decision that the tree needed to be removed.

In response to questions from the Committee, Ms Hiller noted that their house is under the tree and that it takes up a large portion of the property and their neighbours property. It shades the property significantly. She noted that low angle of the limbs was a concern in relation to the potential for failure of a large limb.

Evidence of Submitters

Jim Moffat identified the aims of POTS the group he represents and he spoke in support of the applicants being able to remove the significant tree on the site.

Mr Moffat noted that the tree was in a poor location which meant that it would have ongoing costs for the applicant. Mr Moffat requested that the Committee use some humanity and discretion and allow the tree to be removed.

Jane Hinkley spoke to her submissions at the reconvened hearing. She noted that she was not concerned about the loss of amenity to her site from the removal of the tree and neither were the other neighbour who had submitted in support. She noted that the tree shades her property and that its removal would likely be a benefit. She acknowledged and understood the concerns of the applicant regarding risk.

Expert Advisors

At the initial hearing the Council's landscape expert Luke McKinlay identified that he considered the 2km visibility assessment in the original STEM report was valid when the tree was in leaf in summer and that in his view the STEM evaluation remained valid. Mr McKinlay responded to Committee questions regarding the amenity portion of the STEM assessment and the areas of subjectivity in the STEM reporting. In particular, the visibility of the tree was discussed as this was an area that Mr Waymouth had reduced the score of the tree in his updated assessment. Mr McKinlay noted the rarity of the species on the schedule.

Mr Waymouth the applicant's arborist outlined his assessment and noted that he had pruned the tree in 2010. Mr Waymouth indicated his reasons the reasons for giving the tree a lower STEM score than the assessment undertaken 2001. He was questioned in relation to his STEM and risk assessments. Mr Waymouth noted the trees vigorous growth was likely to be good access to water and the favourable conditions could mean that it growth would be

greater than the industry standard. Mr Waymouth conceded in answering a question that the tree could be seen from 2km if you were hunting for it in summer due to its distinctive foliage colour. Mr Waymouth provided advice on situations where cabling would be used and its purpose.

Mr Roberts the Council's consultant arborist appeared at the reconvened hearing and he outlined the matters contained in his report. He noted the tree was a lovely tree in good health and there was nothing in its condition to suggest that it was going to fail. He also noted that according to nursery standard it was not expected to grow much more it was 16m high at the moment and expectations were for it to reach up to 20m. He conceded that shading would occur that was the result of the tree and not just the land form. He discussed the cabling of the tree and noted that it would need to be re-cabled at some point if it were to be retained.

He discussed the points of difference in his risk rating from Mr Waymouth's. He outlined his tree risk assessment qualifications and noted that he disagreed with Mr Waymouth's assessment in relation to risk considering the risk to be low not moderate. He noted that occupancy under a tree within a house meant that the structure offered protection to the residents within the dwelling. Mr Roberts responded to questions from the Committee regarding risk. He agreed that elms were a tree species that could shed limbs and he referred to an elm tree at Queens Garden that had lost a large limb.

Processing Planner's Review of Recommendation

Ms Burrows acknowledged the submissions from the applicant and their reasons for seeking consent to remove the tree. Ms Burrows noted that these submissions had been considered in the review of her recommendation. Ms Burrows noted that a recommendation was difficult as while the tree was, in her view, significant and worthy of inclusion in the schedule there were material effects arising from the proximity tree to dwellings. Shading was an effect that could not be readily mitigated. She noted that while the applicant was concerned about risk she noted that she relied on Mr Roberts advice the tree was a low risk. She maintained her recommendation to decline the consent.

She responded to questions from the Committee.

Applicants Right of Reply

Ms Hillier focused on shading and risk in her response. She noted that the rooms that the tree shades are bedrooms and main living areas. She reiterated her concerns about limb failure. She noted that she would like to address this issue now and not if the tree starts to fail. She noted the low angle of the limbs and identified this as a concern. She questioned the merits of protecting large trees above dwellings and noted that the tree will continue to grow exacerbating shading and risk concerns.

In relation to neighbourhood amenity she noted that all people who have submitted were in support of its removal.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 8 Residential Zones, and 15 Trees. The relevant objectives and policies of the Proposed Plan (2GP) were considered and the statutory provisions considered included Part 2 of the Act. Regard was also given to the Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

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

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken during the public-excluded portion of the hearing, the Committee inspected the site and this added physical reality to the Committee's considerations.

*That pursuant to Section 34A(1) and 104B and after having regard to to Part 2 matters and Section 104 of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **discretionary activity** being the removal of significant tree T303 on the site at 62 Chambers Street, Dunedin legally described as Lot 56 DP 1590 (Computer Freehold Register OT7D/100).*

Reasons for this Decision

1. With respect to the proposal to remove significant tree T303 the Committee considered the positions of the applicant, submitters, the Council's planner and the expert advice that had been provided.
2. The Committee acknowledged the decades long family connection with the tree and the efforts that had been made in caring for the tree during that time. The Committee also acknowledged that, with the exception of a neutral submission that acknowledged the amenity value of the tree, the submissions received were in support of removing the tree.
3. The Committee considered the significance of the tree and the revised STEM assessment of the tree by Mr Waymouth. It agreed with Mr McKinlay that trees visibility would vary as it was deciduous but while it was in leaf in was visible from 2 Km. On balance they agreed the tree was a good example of a golden elm that was visible from 2km and it was worthy of its listing on Schedule 25.3 in the operative Plan.
4. Although it was not a major part of the applicant's case it agreed with Mr Moffat that the proximity of the tree to the dwelling would mean increase maintenance costs for the dwelling. For example, there would be a likely decrease in the life of paint on the roof of the dwelling which was observed by the Committee at the site visit.
5. The Committee agreed due to the location of the tree and the nature of its canopy that shading from the tree was significant and it agreed with Ms Burrows that the effects of shading could not be readily mitigated through pruning. Continued growth was likely to increase shading impacts.
6. The Committee noted the divergence in the position of the two experts on risk with Mr Roberts indicating that the risk was low and Mr Waymouth indicating the risk was moderate. It considered the risk was likely to be low to moderate. It noted the proximity of the tree to two dwellings meant that failure could result in significant property damage even if the dwelling afforded protection to the inhabitants. The Committee noted that the tree was cabled due to the weight of large limbs and their potential risk and, that elms were a tree at risk of shedding limbs. On that basis the risk posed by the tree could not be dismissed.
7. The Committee considered the amenity impacts arising from the loss of the tree. It acknowledged that it was a tree that had a distinctive foliage and when in leaf that was visible from up to 2km. It noted that the environment that the tree was located was leafy area with a number of trees in proximity to the elm but it considered there would still be an adverse amenity impact from the loss of the tree.

8. In terms of the objectives and policies of the operative District Plan, the Committee noted that these were primarily directed at tree protection. It therefore considered that the proposed removal of a protected tree (T303) would at least be inconsistent the relevant objectives and policies in the operative District Plan. In relation to the objective and policies of the proposed Plan (2GP), which are more balanced allowing consideration of risk and shading in assessing the merits of a removal proposal, it noted that the reasons within those policies for granting consent were relevant in this case. In particular, the Committee noted that in terms of Policy 7.2.1.2 the shading from the tree was a significant issue for the site and was difficult to mitigate through pruning given the proximity of the tree to the dwellings and the nature of the trees canopy.
9. The Committee also considered the direction from the Environment Court in the Butterworth case noted on page 22 the Planners Report in relation to Part 2 considerations. The Committee considers that there are some similarities with this application. The trees proximity to the dwelling means that shading impacts are considered by the Committee to be significant. Its location and size also means that the tree is already quite dominant on the site and it will continue to grow. The difference from tree considered in the Butterworth case is that the tree is a good specimen whereas the tree in the Butterworth case was not of good form.
10. The Committee noted it is charged with consistent administration on the District Plan rules when it determines the outcome of consent applications of this type. Granting consent to this application would mean that it would have to treat other applications in the same way. It noted that a decision to grant consent had implications for the assessment of future applications. In this case the Committee acknowledges the tree is a good specimen but it considers the close proximity of the tree to the living areas of the dwelling results in significant shading. This shading effect cannot be readily mitigated by pruning. The Committee also noted that elm trees can shed limbs and while the risk is assessed as low to moderate the consequences of failure are significant in respect of property damage and this risk is not confined to the applicant's dwelling but it extends to the neighbouring property at 58 Chambers Street.
11. Although it was finely balanced the Committee concluded that the loss of amenity from removal of the tree was outweighed by the negative effects of the tree on the owners of 62 Chambers Street that could not be effectively mitigated. The adverse effects of removal are therefore considered acceptable by the Committee and the Committee considers the removal of the tree will materially improve on-site amenity for the owners of 62 Chambers Street. The Committee considered granting the consent to remove T303 would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.
12. The Committee acknowledged the offer of Ms Hiller to plant another tree at a more suitable location on the site. It has not required tree planting as mitigation as it would not be an effective mitigation for the loss of the tree. It has left any replacement planting for Ms Hiller to determine.

Right of Appeal

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

- (a) *A boundary activity, unless the boundary activity is a non-complying activity;*
- (b) *A subdivision, unless the subdivision is a non-complying activity;*
- (c) *A residential activity, unless the residential activity is a non-complying activity.*

(Refer Section 87AAB of the Act for definition of "boundary activity", and refer to Section 95A(6) for definition of "residential activity".)

For all other applications, in accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received.

The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Commencement of Consent

As stated in Section 116 of the Resource Management Act 1991, this consent will only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Noone'.

Andrew Noone
Chair
Hearings Committee

Consent Type: Land Use Consent

Consent Number: LUC-2018-295

Purpose: Removal of a Significant Tree.

Location of Activity: 62 Chambers Street, Dunedin.

Legal Description: Lot 56 DP 1590 (Computer Freehold Register OT7D/100).

Lapse Date: 15 October 2023, unless the consent has been given effect to before this date.

Conditions

1. The proposal shall be undertaken in general accordance with the relevant details and information submitted with resource consent application LUC-2018-295 received by the Council on 31 May 2018, except where modified by the following conditions.
2. The removal of tree T303 shall be in accordance with arboricultural best practice and undertaken by a suitably qualified person.
3. The consent holder shall advise the Council in writing of the date that T303 is to be removed. The written advice shall be provided to the Council at least five (5) working days prior to the removal of the tree.
4. All waste generated by the removal works shall not cause a nuisance and shall be suitably disposed of within 7 days of the completion of the pruning works.
5. The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of T303 shall be limited to the times set out below and shall comply with the following noise limits (dBA);

Time Period	Weekdays		Saturdays	
	(dBA)		(dBA)	
	Leq	L _{max}	Leq	L _{max}
0730-1800	75	90	75	90
1800-2000	70	85	45	75

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

Advice Notes

1. Please check with the Council's Building Control Office, Development Services, to determine the building consent requirements for the work.
2. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.

3. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
4. It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
5. This consent will lapse after a period of five years from the date of granting of this consent. This period may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.

Issued at Dunedin on 15 October 2018

A handwritten signature in black ink, appearing to read 'Andrew Noone'.

Andrew Noone
Chair
Hearings Committee