

28 April 2021

K N & S E McArley
516 Highgate
Maori Hill
Dunedin 9010

Via email: keithmcarley@gmail.com

Dear Keith & Sally

RESOURCE CONSENT APPLICATION:

**LUC-2020-341
516 HIGHGATE
DUNEDIN**

The above application for land use consent to remove two scheduled trees at 516 Highgate, Dunedin, was processed on a publicly notified basis in accordance with section 95 of the Resource Management Act 1991. I was appointed by the Dunedin City Council (DCC) as an Independent Commissioner to hear and make a decision on the application. I undertook a site visit on Friday 9 April 2021 and then heard and considered the application at a hearing on Thursday 15 April 2021.

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

I have resolved to **grant** consent to the application to remove the scheduled trees. 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:
Keith McArley.

Council staff attending were:

Campbell Thomson (Advisor to Committee), Nicola Petrie (Processing Planner), Mark Roberts (Consultant Arborist), Luke McKinlay (Landscape Architect) and Wendy Collard (Governance Support Officer).

Submitters in attendance were:

Jim Moffat (representing Protect Private Ownership of Property Society)

Procedural Issues

No procedural issues were raised.

Principal Issues of Contention

The principal issues of contention are as follows:

- The current health and amenity value of the trees T608 and T609
- The scope for and likely effectiveness of remedial works
- The provision of planting to offset the loss of the trees

Summary of Evidence

Introduction from Processing Planner

The Processing Planner, Ms Petrie, spoke to a summary of her report, giving an overview of the proposal, the notification of the application and submissions received, and relevant planning issues. She confirmed the two trees subject of the application were an English Beech (T609) situated in the northern corner of the property, which had the larger canopy, and a spreading Elm (T608) located closer to the applicant's residence.

Ms Petrie commented on the expert advice she had relied on in preparing her report, noting that both the trees were in a state of gradual decline. She recommended that consent be granted, subject to conditions.

Evidence from Technical Advisors

The Consultant Arborist, Mr Roberts, spoke to his assessment of the condition of the trees, in which he had examined whether the trees were in decline, and reviewed the condition components of the STEM assessment. He advised that both trees were in a similar condition and that remedial action would require extreme works to try and halt the decline of the trees. Mr Roberts considered that if such action was taken the trees would no longer be notable trees worthy of listing. He commented that he did not feel remedial action to maintain the trees would be successful.

The Landscape Architect, Mr McKinlay, spoke to his analysis of the amenity value of the trees. He commented on the trees and how he had determined his revised score for the amenity component of the STEM assessment. He commented on the canopy of the Beech tree and observed that both trees had the same decline.

Following the applicants presentation, I sought further clarification from Mr Roberts and Mr McKinlay regarding the STEM assessment, and the matter of replanting offered by the applicant. Mr Roberts considered the planting at the park to be a good idea and made sense, but observed that a few trees did not represent an offset for the loss of the Beech tree. Mr McKinlay concurred with this and noted that any planting on the reserve would need to be done in conjunction with reserve staff and take into account amenity values of the open space. I also sought clarification from Mr Thomson on the proposed conditions and process for approval of any planting by Parks and Recreation.

The Applicant's Case

Mr McArley spoke to his application and commented that the Elm tree is a lovely tree which added to the property. He advised that the roots of the Beech tree are causing damage to the front boundary wall, and the tree is weeping water and has fungus and mould on it. He considered that it is now an eyesore and has served its purpose. He agreed with the assessment that the trees are in decline and have had their life.

In response to my questions, Mr McArley advised he had lived at the property for approximately 10 years and had undertaken pruning and maintenance work recommended by Council's Arborist. He stood by his offer to undertake some planting on the Council reserve, on the principle that in taking something away he was happy to put something in its place. He also indicated that he was prepared to contribute towards maintenance of any replanting. He did not consider that replanting a new Elm on his property would be likely to be successful.

In response to further questions, Mr McArley considered that there were still a good number of trees in the Maori Hill area, with some nice trees in parks further along Highgate and close to the footpath on other properties. He did not think there currently was a health and safety risk with the trees, but noted that his neighbour was concerned at safety and anxious that the Beech tree may fall on her property.

Evidence of Submitters

Mr Moffat spoke to his tabled evidence in support of the application. He commented on the advice of the Arborist regarding the condition of the trees and practicality of any remedial action. He considered that the cost of removing the trees will be expensive enough without any replacement planting. He did not consider the replacement planting proposed was necessary or appropriate.

Processing Planner's Review of Recommendation

Ms Petrie reaffirmed her recommendation that consent be granted

Applicants Right of Reply

Mr McArley reiterated the positive aspects of the application and requested that consent be granted. He advised that he accepted a condition regarding replanting some trees, provided that it was time and costs limited. He advised he did not make the offer on the basis of any carbon emissions benefit, but was happy to contribute the planting of two trees of a species acceptable to the Council, suggesting rhododendrons may add some colour. He reiterated that the Beech tree was damaging the boundary wall and the cost of replacing this wall would be huge.

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 that I considered. I had regard to the relevant provisions of the following chapters of the Dunedin City District Plan: Section 4 Sustainability and Section 15 Trees; and to Section 2 Strategic Directions and Section 7 Scheduled Trees, of the Proposed Second Generation District Plan. I was satisfied that there were no additional matters to be considered in relation to the Regional Policy Statement for Otago, or Part 2 of the Act.

Main Findings on Principal Issues of Contention

I considered the evidence heard, the relevant statutory and plan provisions, and the principle issues in contention. My main findings on the principal issues have been incorporated within the reasons set out 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. I reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991.

*That pursuant to Section 34A(1) and 104B and after having regard to Sections 104 and 104D 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 **non-complying activity** being the removal of schedule trees T608 and T609 on the site at 516 Highgate, Dunedin legally described as Lot 1 DP 20160 (Record of Title OT11B/63), subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision

1. I am satisfied on the basis of the evidence presented, that trees T608 and T609 are both in a state of terminal decline, and that remedial work to sustain the health of either of these trees is unlikely to be successful. It was made clear to me that substantial intervention work would be needed to try and arrest the decline in the condition of these trees, with the outcome of this unable to be assured.
2. The long documented history of maintenance and remedial work undertaken in relation to these trees demonstrates to me that there has been a commitment by the property owners to try and maintain the trees, as well as being evidence of the decline of the trees that has nevertheless occurred over many years.
3. I consider that the decline of the trees has now reached a point where the removal of both trees is warranted. The evidence presented to me in relation to the present condition and amenity value of the trees showed that these trees both now fall well short of a STEM score of 147 points. This has been the accepted benchmark used by the Council for the purpose of determining when trees warrant protection by way of inclusion in the District Plan.
4. While the location of the trees is relatively prominent being adjacent to Highgate, particularly with the Beech tree, I am satisfied that the loss of the trees will not represent an unacceptable change to the character of the environment in the vicinity of the subject property, due to the proximity of vegetation in the McMillan Park reserve across the road, and trees on other properties in the wider area. I consider that the offer of the applicant to contribute to the planting of trees on the reserve opposite is commendable, but I do not consider that this matter should be a condition of consent. I am of this view as the planting work does not relate to the subject site and I consider the process for reaching agreement with Parks and Reserves staff over the details of this should be dealt with separate to this resource consent. This is to avoid any delay to the removal of T608 and T609 and subsequent compliance complications.
5. As a consequence of the above, I consider that the adverse environmental effects of the removal of T608 and T609 will be no more than minor and can be adequately mitigated through conditions of consent.
6. I concur with the assessment of Ms Petrie that the proposal is not contrary to the relevant objectives and policies of the District Plans. While I accept there is a degree of inconsistency with these provisions, as they focus on protecting not removing trees, I am satisfied the proposal is not repugnant to the objectives and policies. These provisions give effect to the relevant objectives and policies in the Regional Policy Statement for Otago.
7. I consider that the proposal does satisfy both gateway tests contained in section 104D of the Resource Management Act 1991. As such, I am therefore able to consider the granting of consent to the proposal.

8. Given the site specific nature of all applications concerning trees, and the evidence of the declining state of T608 and T609, there is no reason for me to believe that the granting consent to the proposal will threaten the integrity of the District Plan or establish an undesirable precedent for future applications.
9. I have concluded that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Right of Appeal

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

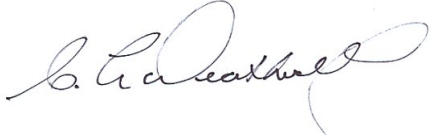
As stated in Section 116 of the Resource Management Act 1991, this consent will only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a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

Monitoring

Section 35(2)(d) of the Resource Management Act 1991 requires every Council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the nature of your intended works, this consent will require one inspection.

Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully

A handwritten signature in black ink, appearing to read 'C. Weatherall', with a stylized flourish at the end.

Colin Weatherall
Commissioner



Consent Type: Land Use Consent

Consent Number: LUC-2020-341

Purpose: The removal of scheduled trees T608 and T609.

Location of Activity: 516 Highgate, Dunedin.

Legal Description: Lot 1 DP 20160 (Record of Title OT11B/63).

Lapse Date: 28 April 2026, unless the consent has been given effect to before this date.

Conditions

1. *The proposed activity must be undertaken in general accordance with the information provided with the resource consent application received by the Council on 27 July 2019 and further information received on 19 October 2020, except where modified by the following conditions.*
2. *The removal of the trees must be undertaken by a suitably qualified person and in accordance with arboricultural best practice.*

Conditions to be met prior to site works commencing

- 3 *The consent holder must supply to the Council at rcmonitoring@dcc.govt.nz in writing at least five (5) working days prior to the works commencing the following information:*
 - (a) *The contractor who will be undertaking the works including the contact details of the contractor;*
 - (b) *The date the trees are to be removed.*

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

- 4 *All waste generated by the removal works must not cause a nuisance and must be suitably disposed of within 7 days of the completion of the removal works.*
5. *The person exercising this consent must take all reasonable measures to ensure the use of machinery for the removal of T608 and T609 is limited to the times set out below and must comply with the following noise limits (dBA)*

Time Period	Weekdays		Saturdays	
	(dBA)		(dBA)	
	L_{eq}	L_{max}	L_{eq}	L_{max}
0730-1800	75	90	75	90
1800-2000	70	85	45	75

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

Advice Notes:

1. *If planting of trees on DCC reserve land is undertaken as proposed to offset the loss of trees T608 and T609, this planting will be subject to the following requirements:*
 - a) *Tree species and planting location to be approved by PARS;*
 - b) *Plants of a minimum height of 2m are provided and planted at the expense of the applicant;*
 - c) *Any work undertaken on public reserve land is to be done by DCC approved contractors to ensure appropriate planting technique and health and safety protocol;*
 - d) *Once planted, trees are maintained by the applicant for 12months before handover to PARS. Any trees that die are replaced by the applicant.*

General

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. 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 responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
5. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

Issued at Dunedin on 28 April 2021



Colin Weatherall
Commissioner