

15 August 2025

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Dear Mr and Mrs O'Byrne

RESOURCE CONSENT APPLICATION:

**LUC-2024-460
33 PRESTON CRESCENT
DUNEDIN**

The above application to remove scheduled Tree T014 was processed on a publicly notified basis in accordance with section 95 of the Resource Management Act 1991. The Hearings Panel (the Panel), comprising of Commissioners Kirstyn Royce (Chair) and Cr Sophie Barker and Cr Steve Walker, heard the application at a hearing held on 13 June 2025. Post hearing, further information was sought as per Minute 1.

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

A site visit was undertaken by the Panel prior to the hearing.

The Panel in a majority decision have **granted** consent to the application on 15 August 2025. 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:

- Anna and Adam O'Byrne (Applicant)
- Simon Peirce (Legal Counsel, Gallaway Cook Allan)
- Josh Alexander (Junior Legal Counsel, Gallaway Cook Allan)

Council staff attending were:

- Jeremy Grey (Advisor to Panel),
- Finn Campbell (Processing Planner),
- Wendy Collard (Governance Support Officer),
- Luke McKinlay (Dunedin City Council's Landscape Architect)
- Mark Roberts (Dunedin City Council's Consultant Arborist)

Submitters in attendance included:

- Jim Moffat on behalf of Protect Private Ownership of Trees Society
- Annette Carr
- Peter and Jocelyn Frost
- Jessica Porter

Procedural Issues

1. A late submission had been received from Michael Jameson on 10 April 2025. The Panel resolved that the submission did not introduce any new points beyond the existing submissions and, as it was received almost a month after the close of the submission period, the Panel determined that the submission was not accepted.
2. The Panel also advises that that one submitter sent emails to the processing planner after the close of the public portion of the hearing. The Panel advise that it is inappropriate to attempt to influence the decision through the planner while the application is sitting before the Panel. All such correspondence should be directed to the Panel via the Governance Support Officer. For completeness, the submitter raised concerns regarding the drainage evidence submitted in response to Minute 1 and proffered their own drainage solutions. The submitter did not provide details of their expertise or qualifications in respect of drainage and, therefore, even if the submitter had followed the correct process, the Panel could not favour the options set out by the submitter over the evidence submitted by the qualified and experienced persons it has before it.

Principal Issues of Contention

The principal issues of contention are as follows:

- The degree of amenity contribution attributed to the tree
- The degree that to which the tree poses a risk to the ancillary residential unit within the subject site, notably, the risk of branch fall and flooding hazard.
- The risk the tree poses to the efficient use of the land.

Summary of Evidence

Introduction from Processing Planner

Mr Campbell spoke to his report and confirmed that the application was a non-complying activity overall. Mr Campbell stated that he accepted the adverse amenity effects of the tree removal were assessed as more than minor but considered that this needed to be weighed against the potential damage/risk posed by the tree to the ancillary residential unit. Mr Campbell noted that the proposed drainage works within the Structural Root Zone were incompatible with the health and stability of tree. He also noted that the application was inconsistent, but not contrary with the key policy of the 2GP.

Mr Campbell advises that the application included no real consideration of alternatives to support the retention of this tree beyond the two proposed drainage solutions which are assessed as incompatible with the health of the tree. Mr Campbell considered that damage to the subject property was likely to occur over time and there had not been a solution proposed to mitigate flood damage to the ancillary residential unit without risking tree failure or decline. Mr Campbell considers that the tree and the building are not conclusively incompatible and that alternatives may exist that allow both to coexist in an appropriately mitigated manner.

In response to questions from the Hearings Panel, Mr Campbell noted that a more complete assessment of alternative drainage options could be considered. Mr Campbell confirmed that the building consent for the ancillary residential unit had been appropriately signed off. The Hearings Panel sought confirmation as to how an “avoid” policy should be treated. Mr Campbell confirmed that the exemptions need to be met otherwise consent should be declined. Mr Campbell is of the opinion that at least one of the exemptions is met but recommended that the application be declined until all reasonable alternative flood risk mitigation solutions are exhausted.

The Applicant’s Case

The applicants legal team opened the applicant’s case, setting out the applicant’s reasons for seeking the removal of the tree. The legal submissions did not dispute that the adverse amenity effects of the tree removal were assessed as more than minor but considered this need to be weighed against the risk the tree posed to the minor dwelling. It is the applicant’s case that the tree poses a moderate to significant risk to the applicant’s property, namely the minor dwelling on the site.

The legal submissions note that the tree was planted around 1947. The first STEM assessment was completed in 1998 and had a score of 168 points¹. A second STEM assessment was undertaken in 2001 with a reduced score of 156 points. In 2013 -14, a further Dunedin City Council assessment of the tree was undertaken as part of an auditing process, but no further STEM assessment was undertaken². Four tree maintenance consents have been issued for the tree in 2005, 2011, 2017 and 2023. It is noted that upon questioning, the 2023 tree maintenance consent was not given effect to.

The legal submissions set out the history of the minor dwelling, noting that it was established as a garage around 1943. The garage was extended around 1979 and a toilet was installed in 2017. Also in 2017, drainage works resulting in a stormwater outfall as part of the hard-surfaced area was installed. The applicant purchased the property at the end of 2021. The garage was operating as a studio/sleepout at that time. In 2022, the applicant converted the studio into a self-contained ancillary residential unit.

The rainfall event which occurred in Dunedin in October 2024 resulted in flooding of the ancillary residential unit. The applicant directly attributes the flooding to the tree root system. To resolve the flood risk, the applicant sought plumbing and drainage advice which considered two options:

- A surface pump; or
- A sump and pump.

The legal submissions consider that there is an inverse relationship between the tree on this property and the neighbourhood’s enjoyment of it; essentially the applicant’s property suffers while the neighbourhood continues to enjoy the visual amenity provided by it. The legal submissions consider that trees cannot be protected in perpetuity and there will inevitably be a circumstance in which removal is considered. The legal submissions rationalise that it is these circumstances that the policy framework provides for.

It is the applicant’s case that both drainage options considered would compromise the health and stability of the tree and, as such, it is the applicant’s position that the proposal falls within the exemptions set out in Policy 7.2.1.2(c) and (e) in that the tree poses a moderate risk to the minor dwelling and prevents the efficient use of land.

Evidence of Submitters

Four submitters attended the hearing and spoke to their submissions as set out below:

Jim Moffat on behalf of Protect Private Ownership of Trees Society (POTS)

¹ Dunedin City Council includes trees which score above 147 points on a Schedule of protected trees.

² On the basis of this assessment, the tree was carried over into the 2GP when this was notified in 2015.

Mr Moffat spoke to his submission in support of the removal of the tree and advised that it is POTS position that the tree should be removed due to the safety risk posed by the tree.

Annette Carr

Ms Carr spoke to her submission and commented that a Silver Beech has a life span of up to 300 years. She also commented that there are only 13 Silver Beech within the city. Ms Carr indicated that the tree was one of the reasons she purchased and built at her property 37 Preston Crescent (next door to the tree) Ms Carr offered anecdotal evidence regarding the flooding of the ancillary residential unit which occurred during the rain event of October 2024 and suggested that there were maintenance factors (such as clearing of the drains) which contributed to the flooding outside of the effects of the tree.

Peter and Jocelyn Frost

Mr Frost spoke to his submission outlining the amenity values that the tree contributes to the area, noting that the tree is a generational feature of the area distinguished by longevity which he and his great-grandchildren have directly enjoyed. He has doubt over the effect of the tree on the renters of the ancillary residential unit. He also made comment on the wider necessity for trees to maintain the health of humans.

Jessica Porter

Ms Porter spoke to her submission and raised concerns regarding the integrity of the plan and the precedent that the granting of this consent would set. She notes that the LIM for the property would have provided the applicant all of the information regarding the tree and that due diligence should have been undertaken when making decisions regarding purchasing the property and creating the ancillary residential unit. Ms Porter considers that the applicants have made the application on the basis of the future use of the property and not the current one. Ms Porter considers that the granting of this consent would be a threat to local democracy.

Evidence from Mr McKinlay and Mr Roberts

The Landscape Architect (Luke McKinlay) spoke to his memorandum.

The Consultant Arborist (Mark Roberts) spoke to his reports. In response to questions, Mr Roberts confirmed his familiarity with the tree, having been to the site on several occasions. He referred to the British and Australian standards and confirmed that no works should be undertaken within the Structural Root Zone as this is likely to cause damage to the structural integrity of the tree. Mr Roberts confirmed that it was difficult to predict the lifespan of the tree within an urban environment but noted that root spread would likely be adversely affected.

Minutes 1 and 2

Prior to the applicant's right of reply, the Hearings Panel adjourned the hearing and sought additional information (Minute 1) regarding the alternative drainage solutions considered by the applicant. The applicant responded to that direction on 4 July 2025. The applicant's response to Minute 1 included technical evidence from Mr Hagendorn, Mr Aurik and Mr Michael Smail.

The Council Planner reviewed the information provided to the applicant and responded to this on 18 July 2025. This response included further comment from Mr Roberts and two Dunedin City Council staff members from the building and drainage consent team.

The submitters were not invited to respond to Minute 1 as the information was of a technical nature relating to the property risk and drainage solutions and none of the submissions introduced technical evidence. Consequently, these responses were determined to fall outside of the scope of the submissions.

The applicant provided their Right of Reply on 29 July 2025. The Right of Reply and the responses to Minute 1 from the applicant and Mr Campbell were circulated to all parties.

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 Panel considered. Regard was given to the relevant provisions of the Partially Operative Dunedin City District Plan. Statutory provisions considered also included regard given to the Regional Policy Statements for Otago.

MAIN FINDINGS ON PRINCIPAL ISSUES OF CONTENTION

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

Amenity effects

There is no dispute among parties that the adverse amenity effects arising from the removal of the tree will be more than minor. However, there is some contention regarding the degree of the scale of the effects, with the general theme of submissions in opposition suggesting that the effects on amenity would be significant. The following submission points are typical of the submissions in opposition:

- *The tree is of significant value to the character and amenity of our neighbourhood and represents an iconic feature not just due to its stature but also its whakapapa. The tree's form is a highlight in our skyline vista and contributes to the quality of our environment*³.
- *The Silver Beech, Tawhai, at 33 Preston Crescent, is a visually stunning native tree that is of extremely high value to the character and amenity of the neighbourhood. and It forms a significant part of the character and personality of this neighbourhood.*⁴
- *It is a majestic and visible landmark ...*⁵
- *This tree provides considerable amenity value to the street, it also provides valuable habitat contiguous to the Town Belt.*⁶
- *Removing this tree would negatively impact the visual environment, the landscape, and the skyline.*⁷

The Panel notes the expert advice of Mr McKinlay that the effects of the removal of the tree would be moderate. There is no other expert advice available to the Panel.

Mr McKinlay notes that⁸:

In general, it is considered that due to its stature and front boundary location, T014 forms a prominent natural feature from surrounding locations on Preston Crescent and Granville Terrace. This Silver Beech is the largest, most prominent tree in the immediate surrounding streetscape. It provides a natural counterpoint to surrounding residential built development. As a tree of considerable age, it has likely become a local landmark.

Mr McKinlay considers that previous pruning work detracts somewhat from the aesthetic value of the tree; due to the asymmetry it has created, but these adverse effects are relatively minor.

³ Submission of Beth and Ben Ryan – Page 102 of the Agenda

⁴ Submission of Jennifer and William Black – Page 111 of the Agenda

⁵ Submission of Jessica Porter – Page 113 of the Agenda

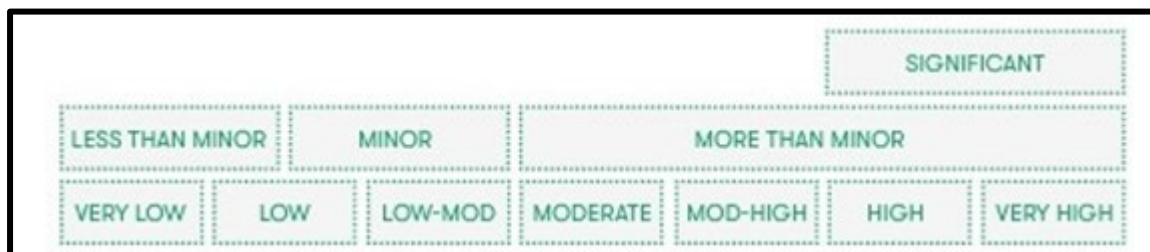
⁶ Submission of Linda Groenewegen – Page 117 of the Agenda

⁷ Submission of Karla Lawrie – Page 130 of the Agenda

⁸ Memo of Luke McKinlay, Landscape Architect - Page 157 of the Agenda

In his conclusion, Mr McKinlay confirms that this large native tree continues to make a positive contribution to the visual amenity of the street and wider surrounding area and considers its removal would have at least a moderate adverse effect on existing amenity values.

While not explicit in Mr McKinlay’s memo to Mr Campbell, the Panel assumes that Mr McKinlay has relied on Te Tangi a Te Manu: Aotearoa New Zealand Landscape Assessment Guidelines (the Guidelines) in which to reach his “moderate” finding in relation to adverse amenity effects. The scale of effects under the Guidelines is compared to the effects assessments required under the Resource Management Act is compared below:



Degree of effect assessment scale - Te Tangi a Te Manu: Aotearoa New Zealand Landscape Assessment Guidelines

In this regard, a moderate effect on amenity would be considered to be more than minor but would fall short of a significant effect threshold.

The Panel recognises the value that the submitters place on the contribution of the tree to the amenity of the receiving environment. However, this must be weighed against the expert opinion of Mr McKinlay.

Commissioner Royce and Cr Barker prefer the evidence of Mr McKinlay, while Cr Walker prefers to accept the experiences of the submitters. In this matter, the majority of the Panel find that the amenity effects arising from the removal of the tree will be more than minor but not significant.

Risk to Health and Safety

There is general agreement between Mr Hagendorn and Mr Roberts that the tree is in fair health, albeit overdue for maintenance, with both arborists confirming that the tree would benefit from the removal of dead and dying branches. The submissions in opposition identified the risk or perceived risk that the fall of branches from the tree posed.

Mr Roberts conducted risk assessments of T014 using two methodologies; the first being a quantitative (numerical) rating (QTRA), and a quantitative (trait-based) rating. Mr Roberts calculated the QTRA rating for risk posed by catastrophic tree failure as 1/100000. This QTRA rating is considered ‘tolerable’ but that risk reduction should be considered. Mr Roberts assessed the TRAQ rating for the risk posed by catastrophic limb failure to be ‘low’ for the next four years and recommends maintenance be carried out to maintain a low-risk rating.

The Panel notes that there was a consent issued in 2023 to allow the applicants to undertake this work. The Panel accepts the advice of Mr Hagendorn and Mr Roberts and determines that the risk associated with imminent or sudden harm to people to be low or negligible and that there is nothing relating to the health of the tree which weighs in favour of granting the consent.

For completeness, the Panel notes that neither arborist report identified any concern regarding proximity of branches to the nearby powerlines, although, future pruning may be required to maintain the regulated powerline clearance distance.

Risk to Property

The Panel notes that the key policy direction is set out in Policy 7.2.1.2 which directs the decision makers to:

Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:

- a. there is a significant risk to personal/public safety or a risk to personal safety that is required to be managed under health and safety legislation;*
- b. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure;*
- c. there is a moderate to significant risk to buildings;*
- d. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities;*
- e. removal of the tree will result in significant positive effects in respect of the efficient use of land; or*
- f. removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree.*

The applicant considers that they have demonstrated that the exemption, provided by Policy 7.2.1.2(c) that there is a moderate to significant risk to buildings, is met.

With regard to the degree of significant risk to the building, the application included a building report prepared by Mr Robert Aurik⁹ and a quote from drainage works from Michael Brown of Adams¹⁰. The application also included an insurance assessment relating to the flood damage arising from the October 2024 event prepared by Morgan Project Services¹¹.

In the Building report, Mr Aurik observed that:

- There are cracks in the foundation, especially near the base of the dwelling, which indicate that tree roots are putting pressure on the structure. Three significant cracks in the footpath have been caused by the upwards pressure from the root system. The root system is visible under the cracks.
- The roots of the tree have changed the angle of the footpath directing the water to drain against the building such that there is potential for moisture to enter the building through the bricks and mortar joints.
- The change in ground levels [caused by the tree roots] has stopped the natural water runoff and has created a flooding risk as evidenced during the October rain event where the water was trapped and flooded the dwelling.
- The stormwater drain running from the back of the dwelling is adding to the drainage problems but to improve and add to the stormwater drain solution and ensure the sufficient removal of water from the property to the existing stormwater drains out on the street, a new trench would need to be dug from the back of the dwelling along the west wall out to the street. This trench would need to cut any tree roots that would be in the way of achieving the correct falls for the new drain.

⁹ Pages 69- 87 of the Agenda

¹⁰ Pages 89 – 93 of the Agenda

¹¹ Pages 94 - 98 of the Agenda

- Relaying the stormwater drain from the back of the dwelling to the street would be difficult and risky as it would damage the root system between the dwelling and the tree, possibly impacting root systems that are supporting the large tree.

Mr Brown identified two drainage solutions, the first being a new surface water sump and the second being a new sump with pump. It is the Panel's understanding that both of these drainage options would require encroachment into the Structural Root Zone of the tree.

The evidence of both Mr Roberts and Mr Hagendorn is that encroachment into the Structural Root Zone would likely have a critical adverse effect on the health and stability of the tree and should be avoided. Mr Roberts further advises that such an encroachment would be contrary to both the Australian and British Standards AS4790 and BS 3998. The Panel accepts that there is no contention between the arborists that encroachment into the Structural Root Zone should be avoided.

Neither Mr Aurik or Mr Brown were available at the hearing and the Panel were unable to test the evidence prepared by these parties, in particular the following points:

- Given the significance of the rain event in October 2024¹², whether it is appropriate to categorise the risk posed from an event such as this as at least moderate risk to the building (in line with Policy 7.2.1.2), and
- Whether the range of alternative drainage solutions had been adequately explored.

The hearing was, therefore, adjourned and further questions were posed to the applicant seeking further consideration of drainage alternatives and the degree of acceptable risk to be carried for the building. In response to Minute 1, the applicant submitted further evidence from Mr Michael Smaill and Mr Aurik.

Mr Aurik in response to Minute 1, advises that surface water should be prevented from entering the dwelling and it is his opinion the building would not have flooded in October 2024 if not for the root system of the tree which has uplifted the ground level.

Mr Aurik confirms that the risk to the building is "Moderate". In coming to this conclusion, Mr Aurik relies on the recognised risk assessment method set out in his response. Based on the risk assessment method submitted by Mr Aurik, the Panel accepts that the risk to the building is at least moderate.

Mr Smaill did not prepare evidence for the application or for the hearing but the Panel accepts his relevant experience and qualifications as appropriate to respond to the questions posed to the applicant as part of Minute 1. Mr Smaill undertook a site visit of 25 June 2025 which contributed to his understanding of the drainage issues on the site. Mr Smaill considered alternative drainage methods as follows:

- Sump method
Mr Smaill confirmed that the obvious drainage solution is to install a sump to direct any surface water from around the dwelling out to the stormwater system at the street. However, the location of the tree root system prevents this option being deployed.
- Trenchless method
This method would involve drilling an underground horizontal hole through which a new stormwater pipe would be installed. This method could potentially be installed with minimal damage to the tree root system. However, there is no guarantee that this method could be installed without an encountering the tree roots.
- Lowering existing ground levels

¹² The October Rain event is recorded as the most significant rain event for Dunedin in recorded history.

This would involve lowering the existing ground levels to improve run-off and ensure compliance with the Building Code. This method would involve significant works within the Structural Root Zone.

- Cut-off drains upslope

Installing a cut-off drain would require a new connection to the Dunedin City Council reticulated stormwater network. The stormwater network is located in the shoulder of the road and would be up-slope from any sump. Draining upslope would require a stormwater pipe to be installed alongside the tree which would also encroach into the Structural Root Zone.

It is Mr Smaill's opinion that there are no fully effective solutions to prevent future flooding without some degree of impact within the Structural Root Zone. Mr Brown also provided an email that confirmed that cut-off drains and trenchless methods were not feasible but for different reasons than Mr Smaill. Mr Brown also dismisses armouring of the building but does not provide any detail on this method. Given the level of detail provided by Mr Smaill, the Hearings Panel prefer the evidence of Mr Smaill over Mr Brown's email.

The applicant's response to Minute 1 was subsequently reviewed by Mr Campbell. Mr Campbell sought advice from Mr Roberts. In his response, Mr Roberts confirmed that he has been involved in trenchless drainage options previously, where contact with tree roots has been undertaken successfully. However, he notes that the path of the drill typically needs to be 1.5m below the surface and the starting point of the drill needs to be well outside of the rooting area. To achieve a consistent fall that passes at least 1.5m below the tree and which will meet up with the reticulated stormwater network. Mr Roberts considers that, in his experience, the starting point of the drill would likely need to start downhill (approximately outside 23 Preston Crescent) and drill under 27 Preston Crescent before connecting with the sump at the subject site. The path of the drill would also need to avoid any other underground services.

While the Hearings Panel accept that installation of trenchless drainage methods falls outside of Mr Roberts area of expertise, the Hearings Panel consider that Mr Roberts experience in previous projects relying on this method provides good insight to the viability of the option and lends weight to Mr Smaill's conclusion.

Mr Campbell also sought comment from Joe Fitzsimmons – Dunedin City Council Team Leader Inspections Regulatory Services and Andrew Roberts – Dunedin City Council Senior Building Consent Officer Regulatory Services. The Hearings Panel considers that neither Mr Fitzsimmons or Mr Roberts (Andrew) added anything of material importance to the proceedings.

Having reviewed the evidence regarding the risk posed by the tree, the Hearings Panel determines, in line with the evidence of Mr Hagendorn and Mr Roberts, that the tree would benefit from the removal of dead and dying branches. The Hearings Panel determines that the risk of branch fall can be suitably reduced through regular tree maintenance. However, in respect of flood risk, the Hearings Panel accept Mr Aurik's advice that the risk posed by the tree to the ancillary residential unit is at least moderate.

Turning to the applicant's ability to reduce the moderate risk, the key solutions relate to drainage options for the site. Commissioner Royce and Cr Barker accept the evidence of Mr Smaill that there are no reasonable drainage options which would avoid the Structural Root Zone. Commissioner Royce and Cr Barker also note the arborists' advice that the Structural Root Zone must be avoided. Cr Walker is not convinced by the evidence and considers that the applicant has not fully explored the range of alternative drainage and flood prevention options. Cr Walker also considers that the potential risk to the health and structural integrity of the tree, should the Structural Root Zone be encroached into, has not been sufficiently established.

In this matter, the majority of the Hearings Panel find that there is a moderate to significant risk to the ancillary residential unit which cannot be reasonably avoided and the exemption set out in Policy 7.12.1.2(c) is passed.

Efficient use of land

The Hearings Panel notes that Policy 7.2.1.2(e) requires consideration as to whether the removal of the tree will result in significant positive effects in respect of the efficient use of land. In the applicant's right of reply, the applicant advises that if they are unable to tenant or otherwise use the ancillary residential unit due to the risk of flooding then this is not an efficient use of land. A number of submissions suggest that the applicant seeks to remove the tree to open up further development potential on the site. The Hearings Panel cannot take into consideration future applications which have not yet been made.

Commissioner Royce and Cr Barker accept that the elevated ground level caused by the tree directs flood water to the ancillary residential unit and that drainage is necessary to reduce the flood risk. Evidence suggests that the installation of the drainage will adversely affect the health of the tree. Commissioner Royce and Cr Barker consider that if the tree is not removed, the applicant has no reasonable options available to mitigate the flood risk without requiring a further application to Council to disturb the Structural Root Zone. Commissioner Royce and Cr Barker consider that, given the evidence of Mr Roberts and Mr Hagendorn in respect of this tree, it is unlikely that such a future application would be successful. Cr Walker considers that the applicant has not fully explored the alternative drainage options and, therefore, is not convinced that the retention of the tree means that the property cannot be used efficiently.

The majority of the Hearings Panel consider that the applicant's inability to reasonably mitigate the risk to the ancillary residential unit posed by the tree weighs in favour of granting the consent and, therefore, determines that the application passes the policy exemption set out in Policy 7.2.1.2(e).

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 Hearings Panel majority 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, 104B and 104D of the Resource Management Act 1991, and the provisions of the Partially Operative Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying activity** being the removal of T014 on the site at 33 Preston Crescent, Dunedin legally described as Pt Lot 8 Blk IV DP 444 (Record of Title OT212/123) subject to the conditions imposed under section 108 of the Act.*

Reasons for this Decision

Majority Determination

Commissioner Royce and Cr Barker find that:

1. The removal of the tree will have moderate / more than minor adverse effects on residential amenity and character but that these effects will not be significant.
2. Regular maintenance would reduce the risk of branch fall and mitigate the risk to powerlines.
3. Encroachment in the Structural Root Zone is to be avoided and will adversely affect the health and integrity of the tree.
4. Alternative drainage options have been explored and there are no reasonable drainage solutions available to the applicant which will not encroach into the Structural Root Zone.

5. The removal of the tree will result in significant positive effects in respect of the efficient use of land.
6. The applicant has satisfactorily demonstrated that the application passes the exemptions set out in Policy 7.2.1.2.(c) and 7.2.1.2(e).
7. There is nothing in the granting of this application which would be contrary to the Otago Regional Policy Statement 2019 or the Proposed Otago Regional Policy Statement 2021.
8. There is no offsetting or compensation offered or available under Section 104(1)(ab) of the Resource Management Act 1991.
9. The application does not pass the first limb of section 104D of the Resource Management Act 1991 as the adverse effects of the proposal are determined to be more than minor. The proposal passes the second limb of section 104D as the proposal is not contrary to the objectives and policies as confirmed by Mr Campbell who provided the only planning evidence before the Hearings Panel. Consideration can therefore be given to granting the consent under section 104D.
10. Section 104(1)(c) of the Resource Management Act 1991 requires regard to be given to any other matter considered relevant and reasonably necessary to determine the application. Matters of precedent and plan integrity are relevant here. With respect to the precedent and plan integrity, the Court has confirmed that cases should be assessed on their merits to avoid affecting district plan integrity. In this regard, little concern for precedent is held and the decision is to be made on the facts of the application. For completeness, it is noted that this application does present a unique set of circumstances in that, the ancillary residential unit was established within an existing building located within the dripline of the tree, the ancillary residential unit is down-gradient of the tree and the drainage solutions available to the applicant have been explored and cannot be undertaken without encroaching into the Structural Root Zone.
11. The granting of the consent would be consistent with the purpose of the Resource Management Act 1991, which is to promote the sustainable management of natural and physical resources.

Minority Determination

Cr Walker finds that:

1. The removal of the tree will have significant adverse effects on residential amenity and character.
2. Regular maintenance could reduce the risk of branch fall and mitigate the risk to powerlines.
3. The extent of the risk to the health and integrity to the tree arising from encroachment in the Structural Root Zone has not been adequately demonstrated.
4. There is the potential for alternative solutions to prevent or mitigate the flood risk to the tree.
5. The efficient use of land is not reliant on the removal of the tree.
6. The applicant has not satisfactorily demonstrated that the application passes the exemptions set out in Policy 7.2.1.2.
7. Offsetting or compensation should be considered under Section 104(1)(ab) of the Resource Management Act 1991.

8. The application does not pass the first limb of section 104D of the Resource Management Act 1991 as the adverse effects of the proposal are determined to be more than minor. In terms of the second limb of section 104D, as the applicant has not satisfactorily demonstrated that the application passes the exemptions set out in Policy 7.2.1.2, it is not clear that the proposal is not contrary to the objectives and policies. As such, at this time the application has not passed either of the limbs of section 104D and consideration cannot be given to granting the consent under section 104D.
9. That a true exception has not been established and the granting of the consent will threaten the integrity of the Partially Operative District Plan and set an undesirable precedent.
10. The granting of the consent would be inconsistent with the purpose of the Resource Management Act 1991, which is to promote the sustainable management of natural and physical resources.

Lapse Date

Due to the applicant's expression of urgency relating to the removal of the tree, the Panel majority determine that a lapse date of two years is appropriate to give effect to the consent after which time the consent will lapse.

Right of Appeal

In accordance with section 120 of the Resource Management Act 1991, the applicant 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 "K. Royce". The signature is fluid and cursive, with the first letter of the first name being a large, stylized 'K'.

Kirstyn Royce
Independent Commissioner
Chair of the Hearings Panel



Consent Type: Land Use Consent

Consent Number: LUC-2024-460

Purpose: The removal of T014

Location of Activity: 33 Preston Crescent, Dunedin .

Legal Description: Pt Lot 8 Blk IV DP 444 (Record of Title OT212/123).

Lapse Date: 15 August 2027, unless the consent has been given effect to before this date.

Conditions

- The proposed activity must be undertaken in general accordance with the approved plans attached to this certificate as Appendix One, and the information provided with the resource consent application received by the Council on 21 November 2024, and further information received on 4 July 2025, except where modified by the following condition.*
- The consent holder must advise the Council, in writing, of the start date of the works at rcmonitoring@dcc.govt.nz. The written advice must be provided to Council at least five (5) working days before the works are to commence.*
- The removal of T014 authorised by this consent must be undertaken in accordance with accepted arboricultural practice by a suitably qualified person.*
- All reasonable measures must be undertaken to ensure the use of machinery for the removal of tree T014 must be limited to the times set out below and must 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 must 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.

- 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 works.*
- Any damage to Council roading or infrastructure services caused by the tree removal must be reported to the Resource Consents Manager immediately at rcmonitoring@dcc.govt.nz and must be repaired and/or reinstated to the satisfaction of the Resource Consents Manager using Council approved contractors. All costs must be met by the consent holder.*

Advice Notes

1. All traffic management is the responsibility of the consent holder and an approved Temporary Traffic Management Plan (if required) must be in place prior to works commencing.
2. If the consent holder:
 - (a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder must without delay:
 - (i) notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.
 - (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Site work must recommence following consultation with the Consent Authority, Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.
 - (b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:
 - (i) stop work within the immediate vicinity of the discovery or disturbance; and
 - (ii) advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, must make an application for an Archaeological Authority pursuant to the Historic Places Act 1993; and
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work must recommence following consultation with the Consent Authority.
3. Please check with the Council's Building Control Office, Development Services, to determine any building consent requirements for the work.
4. 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.
5. 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.
6. 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.

7. 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 August 2025

A handwritten signature in black ink, appearing to read 'K. Royce'.

Kirstyn Royce
Independent Commissioner
Chair of the Hearings Panel

Appendix One: Approved Plan/s for LUC-2024-460 (scanned image/s, not to scale)