



20 February 2026

Wendy Collard
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By email: Wendy.collard@dcc.govt.nz

RE: DUNEDIN CITY COUNCIL RESOURCE CONSENT – KING STREET, MOSGIEL

Please find **attached** herewith for filing closing submissions for the applicants. I would be grateful if you could circulate this to all necessary parties. Kindly acknowledge receipt in due course.

Yours faithfully



GORDON PAINE

IN THE ENVIRONMENT COURT OF NEW ZEALAND

CHRISTCHURCH REGISTRY

ENV 2024-CHC-000101

UNDER the Resource Management Act 1991 (RMA)
N THE MATTER OF An appeal pursuant to section 120 of the Act

BETWEEN DARREN and PHILLIPPA BAIN
Appellants

AND DUNEDIN CITY COUNCIL
Respondent

CLOSING SUBMISSIONS

Dated this day of February 2026

Acting solicitors:
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MAY IT PLEASE THE HEARING COMMITTEE:

1. The Committee directed (Panel Direction 2) that Ms Bain was to review the application against any relevant national direction ...with particular attention to the National Policy Statement for Electricity Networks 2008 (amended December 2025) and the National Policy Statement for Infrastructure 2025.
2. A Memorandum has been received dated 12 February 2026 from Ms Bain.
3. Ms Bain outlines at page 2 the 14 policies that deal with the objective as she has set it out are to be met.
4. There has been no evidence at all on Maori interests which is a category that must be met to achieve the objective, nor has there been any evidence of site, route and method for electricity network activities, managing the effects of third parties on the electricity network and possibly electric and magnetic fields and long term spatial and strategic planning for the electricity network.
5. Bearing in mind the tree is growing up to and through and over the electricity cables, it seems appropriate that the lines company should be served with a copy of the application as it may well mean that the lines company might agree that the tree needs to be felled for the safe operation of their lines. That would fit within the new policy directions as objective 4, 5, 5 and 7. It would be remiss not to raise this issue with an organization that it directly impacts upon in circumstances where they would have certain responsibilities.
6. It is submitted that policy makers (DCC) must ensure that building structures, earthworks, subdivision and land use activities are designed and located to maintain safe harm and allow sufficient space for access to and maintenance construction and development and upgrading of EN. Also the DCC must ensure that the nature

and location of any proposed trees or vegetation to be planted around the EN do not compromise its function and operation.

7. There is no evidence as to the power company's position and it is respectfully submitted that it is something that is required so that all parties have the voice.
8. The Committee has viewed the tree in situ and it is respectfully submitted that it is a "nothing special" tree and indeed in the material supplied by the planners, and in the viva voce evidence of the senior planner, the tree's only amenity is that it is a tree. It is not a particularly special tree of significance r
9. For a local issue there were eight submitters in support of the removal of the tree, and nobody to oppose. Notwithstanding this and the fact that the amenity value is only the fact that it is a tree and not a widely spectacular one, the planners view is that the application should be declined.
10. It is significant, however, that the planners both Mr Thompson and Ms Bain at page 20 of the documents stated;

"As noted in paragraph 83 above, should the Committee assign more weight to the views of the applicants and submitters than to public benefit, it might reach a different conclusion regarding the overall environment effect associated with the removal of the tree. If the Committee finds adverse environmental effects to be no more than minor and that the proposal passes section 104D(1)(a) the Committee consider granting consent to the application."

11. It is clear from that statement that in the view of the planners there is wide discretion of the Council where it needs to consider the overall environmental effects associated with the removal of the tree.

12. The planners also talk about public benefit but, apart from the fact that this is a tree not on Council land, but Council refuses to let the owners of the tree deal with it in the most appropriate way but having made their statement with respect to public benefit, have not pointed out what that public benefit is. To the submitters and the applicants a public benefit is to remove the tree so as to prevent potential loss in the future, depending on the weather event or just simply the tree itself decides to give up the ghost.
13. With respect to the planners, there were a number of comments in the Bain report which seemed to criticise the applicants for not having addressed certain points but it is respectfully submitted that the onus is on the Council to show why the tree should not be removed.
14. If one stands back and looks at the situation, the surrounding neighbourhood, the people affected by the shade, the light and the potential for damage, all believe the tree is dangerous and should be removed. It is only the Council and their arborist who believe otherwise.
15. No evidence was called by the Council on growing cycles etc of any trees and it is also unfortunate that the evidence of Mr Roberts seemed to be solely aimed at Mr Weymouth's involvement and evidence(, and the same with Mr Hagendorn) and has not concentrated on the issue before the Committee namely is there health and safety issues that arise because of the condition of the tree. Both the applicants' experts say yes and point to the fact that when one has climbed the tree and looking down the crack is obvious. Unfortunately, Mr Roberts never climbed the tree nor looked down, a fact that Commissioner Wiley seized upon.
16. The evidence of Mr Hagendorn strongly suggested that removal was appropriate and the safest thing in all the circumstances. The planning report (p18) points out that inclusion of the schedule does not indicate there is no risk or safety or risk of potential damage to existing structure buildings or structures. The planning report suggests that pruning/maintenance methodology put forward by Mr Hagendorn

(totally as an alternative) if the main object could not be achieved, and the assessment indicates retention of the tree as a viable option.

17. That is the only evidence from the Council and Mr Hagendorn and Mr Weymouth both gave evidence that such methodology would be intensive, and expensive. On that basis it would seem that the obligation to prune etc, would lie with the Council as the Council is the entity requiring retention.

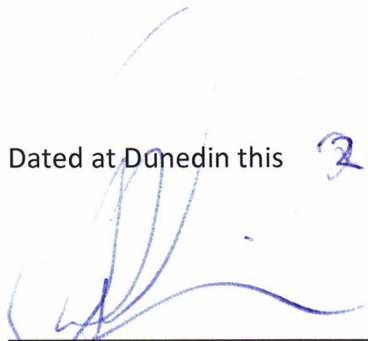
18. Page 18 of the planner's report states;

"On balance the proposal is found to be inconsistent with but not contrary to the strategic direction objective and policy.

Thus there is an area where the Council could seem to its ratepayers to take the bull by the horns.

I am loath to attribute further costs to Philippa and her husband but it may well be that because the amenity value is simply that of a tree, that a better specimen of tree or type of tree could be used to replace the pin oak thus achieving everyone's objectives.

Dated at Dunedin this 20th day of February 2026.



Gordon Paine
Counsel for the Appellants