

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under section 120 of the Act
BETWEEN	PROTECT PRIVATE OWNERSHIP OF TREES SOCIETY
	(ENV-2018-CHC-213)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent
AND	J L SNOW AND J A NIELSEN
	Applicants

Environment Judge J R Jackson – sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 6 March 2019

CONSENT ORDER

- A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed subject to conditions as set out in Appendix 1 attached to and forming part of this order.
- B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

[1] Protect Private Ownership of Trees Society lodged an appeal under section 120 of the Resource Management Act 1991 ("the RMA" or "the Act") against conditions of a decision of the Dunedin City Council relating to a tree replacement at Falkland Street, Dunedin.

[2] The court has now read and considered the consent memorandum of the parties dated 28 February 2019 which proposes to resolve the appeal.

Other relevant matters

[3] No person has given notice of an intention to become a party under section 274 of the Act.

Orders

[4] The court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the purpose and principles of the Act including, in particular, Part 2.



J R Jackson
Environment Judge



APPENDIX 1

Consent Type: Land Use Consent

Consent Number: LUC-2018-367

Purpose: Removal of a Significant Tree.

Location of Activity: 27 Falkland Street, Dunedin.

Legal Description: Pt Lot 20 DP 3652 (Computer Freehold Register OT279/95).

Conditions

- The proposal shall be undertaken in general accordance with the relevant details and information submitted with resource consent application LUC-2018-367 received by the Council on 4 July 2018, except where modified by the following conditions.*
- The removal of tree ~~T442~~T422 shall be in accordance with arboricultural best practice and undertaken by a suitably qualified person.*
- The consent holder shall advise the Council in writing of the date that ~~T442~~T422 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.*
- Prior to undertaking the tree removal work a traffic management plan prepared by a suitably qualified person is to be submitted to and approved by the resource consents manager. The Traffic Management Plan must include details of signage and proposed traffic control method to ensure safe and efficient operation of the transport network during the removal operation.*
- 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.*
- The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of ~~T442~~T422 shall be limited to the times set out below and shall comply with the following noise limits (dBA);*

Time Period	Weekdays(dBA)		Saturdays(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.



- ~~7. The consent holder must plant a tree in an appropriate location within the front yard of 27 Falkland Street to mitigate the amenity effects of removing significant tree T442. (See Advice Note 6)~~
- ~~8. The tree must be planted within the first planting season following the removal of the Cedar (T442).~~
- ~~9. The tree must be supplied from a commercial nursery and must be growing in a bag (at least 50 litres) at the time of planting.~~
- ~~10. The tree must be adequately maintained and in the event that the tree dies, it must be replaced as soon as practicable.~~

Advice Notes

1. Please note this approval is a resource consent approval. 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.
- ~~6. It is recommended that the tree species be selected to reflect the period of botanical selection that would have been used when the neighbourhood was established, being the 1920s and 1930s. For example, Japanese Maple (*Acer palmatum*), Rowan (*Sorbus aucuparia*), Strawberry Tree (*Arbutus unedo*) or similar.~~

