
TO: Hearings Committee

FROM: Madeline Seeley, Planner

DATE: 14 October 2019

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2019-380
5 Ferntree Drive, Wakari, Dunedin

APPLICANT D L Williams and J M Phillips

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 14 October 2019. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs [168] to [172] below, I consider that the proposal is contrary to the relevant objectives and policies of both the Dunedin City District Plan and the Proposed Second Generation District Plan. As a result, I have concluded that the proposal to remove the tree should be declined.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to remove a protected tree, being a European Silver Fir (*Abies alba*) located at 5 Ferntree Drive, Wakari. The Fir tree is listed in the Operative District Plan ('the ODP') as 'T444' and is also listed as 'T444' in the Schedule of Trees in Appendix A1.3 of the Proposed District Plan ('the 2GP'). The land at 5 Ferntree Drive, being Lot 4, DP19517, is a Council Reserve.
- [4] The applicants own the adjoining site at 3 Ferntree Drive (to the south of the subject site/tree). This site is the subject of a subdivision named 'Ferntree Mews'. The applicant has been granted resource consent to subdivide 3 Ferntree Drive into 3 lots each being of 500 square metre (approximately). These lots have been prepared (buildings removed, vehicle access created, land grazed and fences along internal boundaries erected), however, the lots currently sit vacant. The Council has received a request for certification that the conditions of subdivision consent have been met (a statutory requirement for issue of titles). Building consent to erect dwellings on Lots 1 and 3 of the subdivision has been granted. The adjoining site is mentioned at the outset of this report as it is inextricably linked to the application to remove the tree and referred to throughout this report.
- [5] The application provides the following reasons for the tree's removal:

- A tree risk report undertaken by an arborist, Peter Waymouth (from GreenTrees Ltd.), attached to the application has concluded that the tree has a high risk probability of shedding a large leader or limb during storms onto 3 Ferntree Drive, potentially causing damage to people or property.
- The report highlights that the tree is a danger to traffic, pedestrians on the footpath running under the tree and to the subdivided property at 3 Ferntree Drive. The applicant states the footpath at Ferntree Drive is busy.
- The tree sheds needles in autumn, and when combined with rain or frost, make the footpath slippery. A neighbour has slipped on the needles and broken her wrist.
- The tree root growth makes the footpath uneven and hazardous
- The tree is in proximity to a water main
- The tree's stability is compromised because of successive years of ground work (historic service trenching) around the base of the tree (prior to the tree being listed) cut the tree's roots

[6] The arborist's report undertaken by Peter Waymouth includes a STEM assessment and a Tree Risk evaluation. Mr Waymouth's comments in the report are summarised as follows:

- The tree is uncommon and unsuited to an urban environment, being a production forestry tree from Northern Europe. Fir trees can attain a 50-60m height where space allows and can live for 500 years. Mr Waymouth notes the tree's age of around 90 years and height of 34m expects the tree will achieve a height of 60m in next 100 years. He notes it was likely the tree was planted near the Ferntree Lodge driveway.
- Mr Waymouth makes comparison to a 40m Silver European Fir in Chingford Park, NEV, stating it has similar characteristics (health, condition, size and age) and similar structural weakness. Mr Waymouth states that despite the Chingford tree being in a sheltered situation, the tree has shed 2 large branches during storms in the last 5 years.
- Mr Waymouth states the tree at 5 Ferntree Drive has 3 serious defects when viewed from the west, all of which could split from the tree endangering people and property at 3 Ferntree Drive. Raising the canopy may have exacerbated the effect of branch sway in wind and reduced the mass-damping effect generated by storms, branch sway in wind is now concentrated at the weak attachment point of large branches, increasing the chances of breakage. Mr Waymouth also says a large girdling root is present on the south side of the tree, which may compromise the tree's stability and can easily be damaged during construction of the dwellings.
- Mr Waymouth acknowledges that 2 frontal wind systems creating wind turbulence can occur in Dunedin, but this is a rare event. When huge force occurs at weak branch unions, branch breakage becomes a high risk to people and property.

- In the Risk Assessment Evaluation, Mr Waymouth assesses the tree as having a high likelihood of branch impacting a 'target' and the consequences of branch failure as significant. The overall risk rating of the tree is assessed as High.
- Mr Waymouth re-assesses the tree using the STEM methodology (described in paragraphs 38 and 39 of this report). He gives the tree a total score of 144.
- Mr Waymouth notes the tree will become disproportionately large overhanging infill houses at 3 Ferntree Drive.
- Mr Waymouth is concerned the grading and levelling of the subdivided land may have already resulted in feeding root loss (changing the water table levels) and the presence of a girdling root may lead to a decline of the tree's 'vigour and vitality'. Mr Waymouth notes the impervious surfaces across the 3 sections of Ferntree Mews will increase to over 70%, decreasing the water source of the tree adversely.
- Mr Waymouth includes several documents to support his report, including diagrams showing the tree's protection zone radius and potential branch fall zone, photographs of the tree's shading onto Lot 1 of SUB-2016-103 and the service laying works for the subdivision. Mr Waymouth also attaches several resource consents issued for minor works on the tree and the subdivision and land use consent for 3 Ferntree Drive (these are summarised below).
- Mr Waymouth concludes that there are 2 options available to remedy the health and safety risk of the tree in close proximity to the new houses to be built at 'Ferntree Mews':
 - Prune the tree using reduction cuts to lessen end weight and install cabling and bracing with a working load limit of 4 tonnes; or
 - Remove the tree and replant with rhododendrons, camellias, azaleas, viburnums.

[7] A copy of the application, including the arborist's report, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

[8] The site is a triangular slither of reserve land adjoining Ferntree Drive managed by the Dunedin City Council Community and Recreation being part of the area known as Ferntree Reserve. It is 380m² in area and located on the western side of Ferntree Drive. It largely consists of a grassed plot of land with small roadside vegetation. The site is located close to the entrance to Ferntree Drive, at the bottom of the hill where it intersects with Dean and Wairoa Streets. It has approximately 46m of frontage to Ferntree Drive, 16m of frontage to the residential property at 7 Ferntree Drive and 47m of frontage to the residential property at 3 Ferntree Drive. As noted above, the latter property is in the process of being subdivided into 3 lots, now known as 'Ferntree Mews'.

[9] The subject tree is located at the southern most point of the site/'triangle' and access to 3 Ferntree drive is provided to the south of its trunk. The site located on the opposite side of Ferntree Drive is approximately 2ha of public bush/reserve, being the main part of the area known as Ferntree Reserve, also belonging to the Dunedin City Council Community and Recreation. A public walkway passes through the north section of the

site, parallel to its northern boundary. The public walkway continues beyond the site and provides a shortcut between Hood Street and Ferntree Drive.

- [10] Ferntree Drive is a cul-de-sac street that generally borders Ferntree Reserve to the west. It winds uphill towards Helensburgh Road from its intersection with Dean and Wairoa Streets. A pedestrian thoroughfare provides access to Ferntree Reserve and Taieri Road at its northern end.
- [11] A group of 4 scheduled Larch (District Plan #G039) (*Larix decidua*) are located on the opposite side of Ferntree Drive, within the road reserve. These trees line the opposite side of Ferntree Drive and almost form a 'tree tunnel' with the subject tree.
- [12] The site is legally described as Lot 4, DP 19517.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [13] The subject site forms part of what was originally the grounds of Ferntree Lodge. The present site of Ferntree Lodge is now a much smaller site at 14 Ferntree Drive. It contains a house built in 1849 and used to include the adjoining Ferntree Reserve. The 'land, buildings associated with Ferntree Lodge and grounds thereon' are listed with Pouhere Taonga/Heritage New Zealand as a Category 1 Historic Place (List #368). Ferntree Lodge is also a scheduled building in terms of both the Operative and Proposed District Plans (#B581). The Heritage New Zealand website states the building is Dunedin's oldest surviving residence and has aesthetic, archaeological, architectural, cultural, historical and technological significance. The building was built from upright squared ferntree (ponga) logs, cut from the surrounding bush, plastered together with clay. The website provides further history and context of the area as follows:

Ferntree Lodge remained the Thomson family home for 60 years and it was during their ownership that many of the existing trees were planted. Over 6,600 square metres of lawns, gardens and trees were planted. Most were natives, particularly North Island varieties rarely seen in the lower South Island.

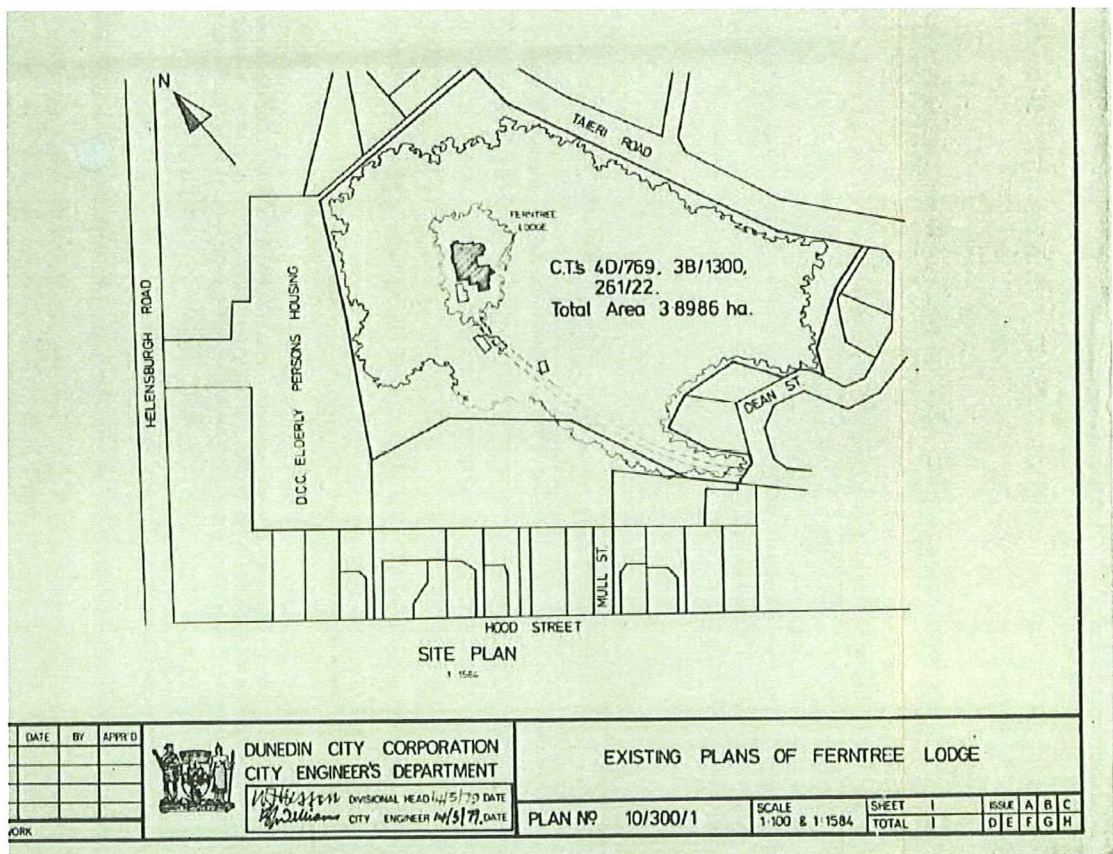
William Thomson died in 1950. After his death the property passed through several hands including NZ Breweries who bought the property with a view to opening a restaurant. In 1979 the Dunedin City Council bought Ferntree Lodge. Ferntree Bush Reserve was created on its north, east and south boundaries and other parts of the property were subdivided for housing. The house was sold into private hands in 1986. In 2011 the house was sold by the Crown who confiscated the property from convicted fraudster Michael Swann. In 2017, Ferntree Lodge is a private residence.

- [14] Aerial photography of the area from 1942, 1947 and 1957, prior to the creation of Ferntree Drive, show a tree lined entranceway/driveway leaving from the same point that Ferntree Drive intersects with Dean Street to Ferntree Lodge, roughly following the route that Ferntree Drive now leads. A section of a photograph accessed from <http://retrolens.nz> taken on 15/10/1942, Survey Number SN223, is provided below, showing the subject site and Ferntree Lodge Estate (note that the photograph is on a tilt and Taieri Road is shown in the north of the photograph, whereas Taieri Road is actually to the east of the subject site). It is unclear whether the subject tree forms part of the tree-line bordering the entranceway, however, the tree would have been approximately

13 years old at the time of the photograph and the location of the tree line appears to be consistent with the location of the subject tree.



- [15] A site plan held in Council's records titled 'existing plans of Ferntree Lodge' dated 14/04/1979 shows the entrance way to Ferntree Lodge from the same point that Ferntree Drive intersects with Dean Street, therefore providing evidence of the entranceway to the Lodge.



- [16] The site was created and vested as reserve (recreation) land in August 1985 as a result of a subdivision (subdivision of Part Lots 1 & 2 DP 3126, Lot 2 DP 9221, Lot 2 DP 11731, Lot 1 DP 12694 & Lot 1 DP 17957 Being Part Sections 108, 109, 110, 11, Creating Lots 1-5 DP 19517 (including the subject site)). The Ferntree Reserve across the road from the site was subsequently vested as local purpose reserve land (recreational) as part of a subdivision of Lot 1 & Part Lot 3 DP 19517 and Lot 1 DP11731, creating Lots 1-18 DP22582 in March 1992.

2001 STEM Assessment

- [17] The subject tree received a total STEM score of 174 points when assessed via the STEM method (see below) on 2nd April 2001. The amenity evaluation section and the condition evaluation section received the same subtotal of points being 87. The highest score was attributed its solitary nature in the 'proximity' category (27 points), while occurrence, form and stature characteristics all received 21 points each. No points were attributed for the 'notable evaluation' category. The 2001 Council STEM assessment is attached in Appendix 3 of this report.

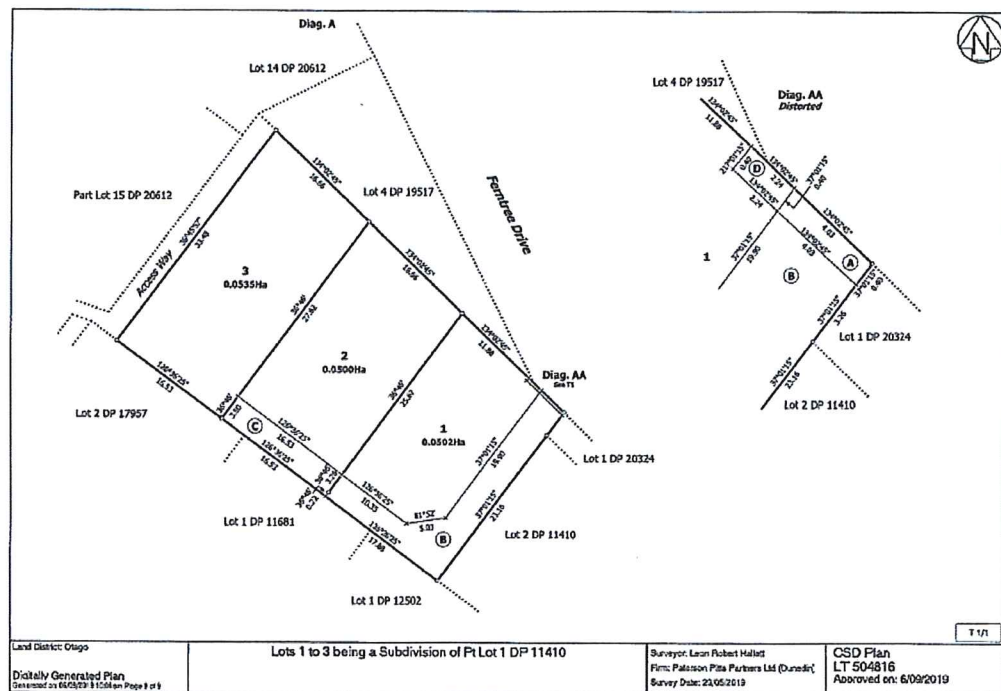
2GP Audit of Scheduled Trees -2013/2014

- [18] During the District Plan change process, most of the significant trees were surveyed again in 2014 by a Council Landscape Architect and a Council Arborist, to see if the trees were worthy of continued inclusion into the 2GP's 'schedule' of significant trees (Appendix A1.3). The assessment of the subject tree determined that it warranted specific protection under both the operative and proposed district plans. However, the STEM assessment was not undertaken in 2014, and the 'assessment' was more akin to an inventory. A photograph of the subject tree is in Council's records from the 2GP 'audit', dated 7th November 2013 and attached as Appendix 3 of this report.

"Ferntree Mews" Subdivision - SUB-2016-103 and LUC-2016-515 – at 3 Ferntree Drive

- [19] Subdivision consent and an associated land use consent were granted on 26th January 2017 to divide the 1538m² site at 3 Ferntree Drive into 3 new lots of approximately 500m² each. The land use consent was for future residential activity with reduced yard spaces on Lots 1 and 3. The reduced yards were for the small section of Lot 1 that has frontage to Ferntree Drive, reducing the required 4.5m setback to 3m and the northwest boundary (shared with the public walkway) of lot 3, reducing this setback to 2m. The other reduced setback was for an internal boundary.
- [20] Proposed Lot 1 is at the south end of 3 Ferntree Drive and a reduced front yard is only with respect to 5.5m of the frontage of this lot to Ferntree Drive. This area has now been converted to a driveway/right of way to provide vehicle access to the 3 lots. The balance of this boundary is shared with the subject site at 5 Ferntree Drive and in terms of the District Plan rules at the time of consent, a yard of 2m is required along this boundary (with the exception of requirements in relation to the scheduled tree).
- [21] At the time of the consent decision, the 2GP rules did not have legal effect and the application notes no development can occur under the canopy of the tree without resource consent (as per the Operative District Plan). The 2GP rules had been publicly notified, however, and were publicly available to view. An advice note (Advice Note 12 of LUC-2016-515) notes that the 2GP rules extend the exclusion area to half the height of a scheduled tree and that this new rule could have implications for development on Lots 1 and 2 in the future.

- [22] The decision report extensively discusses the effect of the subdivision resulting in a higher residential density of 3 Ferntree Drive and the closer proximity of a future dwelling to the tree. Reverse sensitivity effects relating to the existing shading of 3 Ferntree Drive (particularly Lots 1 and 2 of the subdivision as the tree is directly to the north of the subject site), the potential for branch drop, and the seasonal seed and leaf distribution that could impact residential activity within proximity to the tree are among matters considered. The report also notes that the tree is not on the subject site of the application and the future owners of the lots should not expect to be able to remove the tree. In addition, the report notes that there should be no expectation that resource consent would be granted to build within the 'Tree Protection Zone' of the 2GP.
- [23] The Council's Arborist, who consulted and provided comments on the subdivision application (Eléna O'Neill – Treescape Environmental), noted that the tree was of good health and vitality (November 2016). The arborist estimated the tree was around 80 years old and that this species of tree has a dense canopy, therefore casting significant shade. She noted in her report that while the tree was suitable for its surroundings at the time, the addition of 3 new dwellings resulting from the subdivision approval may lead to the tree being considered the wrong tree in the wrong place, as the houses would become 'targets' for branch fall. The arborist noted that the subdivision/inevitable development will have adverse effects on the tree if not carefully planned for and managed.
- [24] Ms O'Neill noted that the dripline of the tree extends over proposed lot 1 and 2 and that further resource consent will be required. She further noted that the feeding roots of the tree are likely situated on its western side – where permeable surface is currently present and that excavations of only 100mm in depth could affect the tree adversely. The Arborist makes recommendations including the use of Silva Cell (structural suspended pavement cells) or similar to avoid excavation for accessway and/or infrastructure within the protected root zone of the tree.
- [25] The decision certificate specifies that prior to s224(c) approval, the following conditions of SUB-2016-103 in relation to the tree are required to be met:
- *A Tree Protection Zone (TPZ) in the form of a physical barrier must be established prior to any works being carried out for the formation of the access and/or servicing of the new lots, to prevent construction and compaction damage to the tree. The extent of the TPZ must be established by Council's arborist. The TPZ must exclude all vehicles, plant, machinery, construction materials, fuels, liquids, etc. from entering the zone. This must remain in place until all works have been completed on site (condition 3(e) of SUB-2016-103).*
 - *If an accessway and/or any infrastructure is to be installed within the protected root zone of the tree, structural suspended pavement cells (Silva Cell) or similar should be employed to avoid excavation. (Condition 3(f) of SUB-2016-103)*
 - *The owner of the tree must be consulted before any consents on the tree are issued. (Condition 3(g) of SUB-2016-103)*
- [26] In addition, a consent notice was required to be registered on the titles of Lots 1 and 2, that outlines the above conditions. (Condition 3(i) of SUB-2016-103).
- [27] The following Survey Plan was approved by Council under section 223 of the Resource Management Act 1991 (RMA) on 12 June 2019.



- [28] Title has not been issued for the lots created as part of SUB-2016-103, but an application for certification under s224(c) of the RMA was received by Council on 25 September 2019. A copy of the approved scheme plan for SUB-2016-103 is provided below:

COPY OF PLAN: Not to scale.



LUC-2018-86 – 5 Ferntree Drive

[29] A resource consent to prune the tree, specifically crown raising and crown reduction (if required to reduce the length of the 2 competing leaders) – with removal of no more than 25% of the live crown/foliage of the tree (condition 5), was granted on 14th March 2018. The applicant was Absolute Tree Care Limited, who carry out tree maintenance on behalf of Council. The arborist's assessment (Robert's Consulting) noted the tree was in good health and had vitality within the normal range for the species and age. The Arborist also made the following comments:

- Abies are typically a single trunk or leader species, T444 has developed a second leader at approximately 14m with the main trunk developing a 3rd leader at approximately 22m
- The land under and around T444 had been cleared of building and divided (fenced off) into three sections.
- Pruning work undertaken in the past which appears to have been carried out in accordance with industry accepted pruning standards
- T444 had good trunk taper and appeared to have good root flare
- The root flare had encroached over and lifted a section of footpath directly under the tree on Ferntree Drive [image two]
- Overall, the tree appeared to free from obvious defects that suggest imminent failure and the main branch unions appear sound

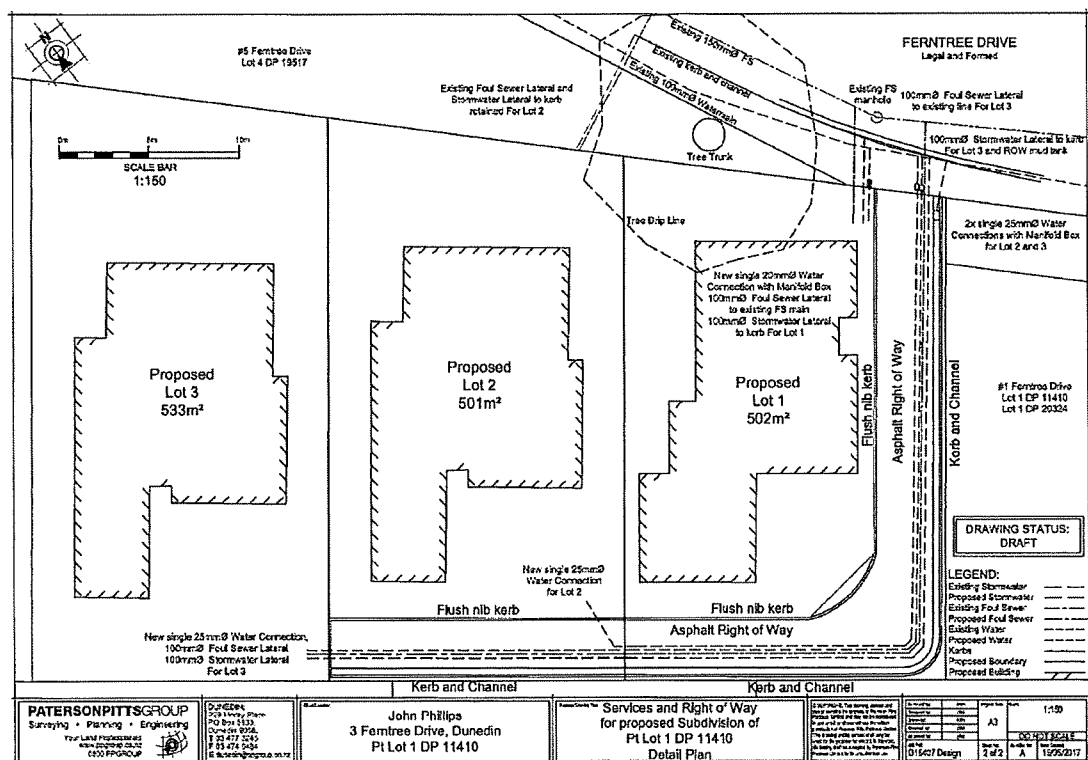
[30] In addition, Mr Roberts made the following comments on his point referring to the subdivision works on the adjoining site. These are as follows:

- the land under and around T444 had been cleared of building and has been divided into sections. It is possible that construction activities may be planned to take place in the root zones of this tree. At the absolute minimum, a Structural Root Zone (SRZ) should be included on all planning application plans and established on site before any construction begins. No works or excavation can take place within the SRZ.
- In accordance with Australian Standard: AS 4970 - 2009 Protection of Trees on Development Sites, which is recommended by the New Zealand Arboricultural Association. The SRZ shall be circle taken from the centre of the trunk with a radius equal to 3.31 times the diameter of the trunk measured just above the above the root buttress. The SRZ for T444 is 4.9m.
- The SRZ should be established and fenced off before construction begins, no works or excavation can take place within the SRZ.

[31] The arborist's report was referred to in the consent document and states: crown raising shall consist of the removal of the lower branches back to the main trunk to a height of approximately 8m. The natural form and balance was to be maintained during the pruning. Crown thinning and crown cleaning was not permitted by the consent. The consent document refers to the arborist report throughout and states that the conditions must be complied with in conjunction with the Arborist's report.

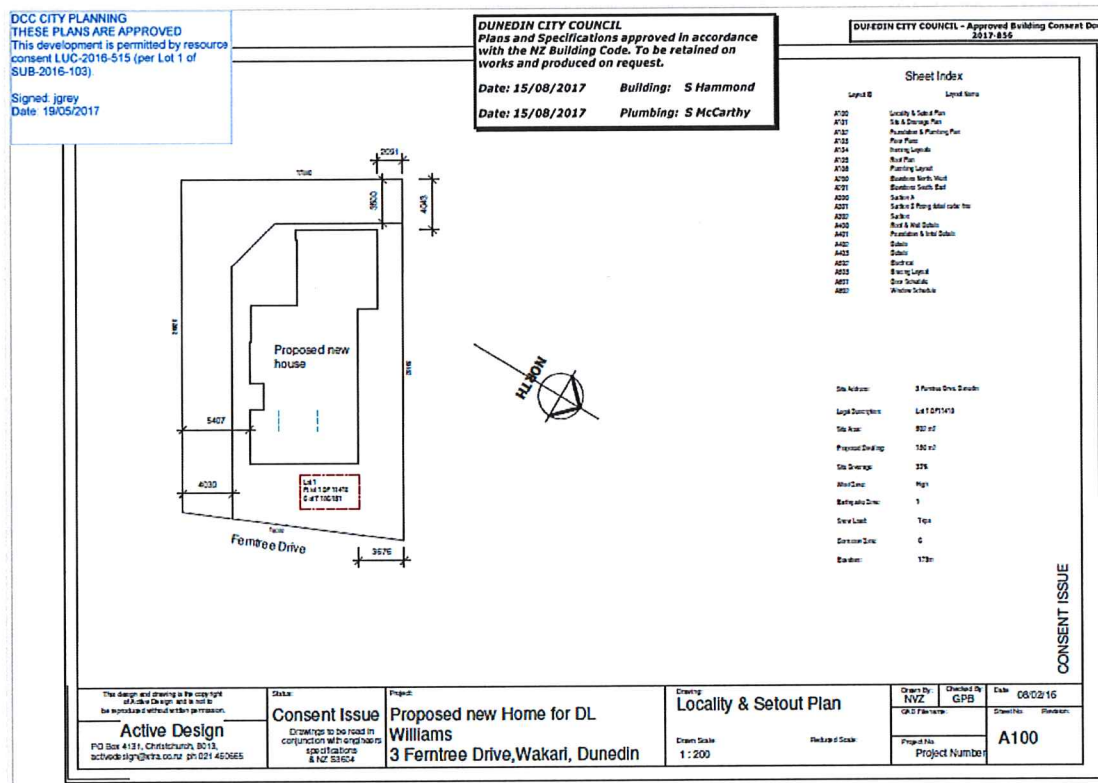
LUC-2019-61 – 5 Ferntree Drive

- [32] A resource consent to conduct works within the root protection zone of the subject tree was granted on 7th March 2019. The works involved a 10m² drill hole on the site to connect services (already laid) for the subdivision at 3 Ferntree Drive. The proposed area of excavation was outside of the dripline of the tree, but within the new 2GP setback or 'Tree Protection Zone' ('TPZ') requiring consent where any earthworks or otherwise is within a distance of half the height of the tree, away from the tree.
- [33] The application included a plan prepared by Paterson Pitts surveyors that differed from a building consent that had been granted for development on Lot 1 of SUB-2016-105 and showed a dwelling on each of the subdivided lots of 3 Ferntree Drive. The dwelling on Lot 1 was shown within the dripline of the scheduled tree (see Plan below). The application states that the construction of these dwellings was not included in the consent requested for the services connections. The 'Tree Protection Zone' was also shown on the Patterson Pitts plan – estimated as 950m². The planner issuing the consent provides a cover letter on the consent, clearly stating that the site plan provided which shows the new development at 3 Ferntree Drive was not considered to be part of the application and as such was not assessed.
- [34] The Council's arborist, Roberts Consulting, noted the tree was in good health with even foliage and root flare have vitality within the normal range for the species and age, that the canopy of the tree was evenly foliated throughout and the tree had good trunk taper and root flare, and the root plate appeared to be stable. He noted the proposed work would affect less than 10% of the 'TPZ'. Council's arborist further noted that the tree should be subject to annual arboricultural inspections and after extreme weather events to ensure ongoing safety and maintain the tree vitality.



ABA-2017-856 – Building consent for a dwelling on Lot 1 of SUB-2016-103

- [35] Building consent was issued to establish a dwelling on Lot 1 of SUB-2016-515 on 22nd August 2017. According to Council's records, this consent expires on 22nd December 2019. It is not clear from the building consent whether the dwelling granted building consent is within the dripline of the scheduled tree, as the dripline/canopy outline is not shown on the plans. The plans were checked by City Planning on 19 May 2017, and the stamp on the plan states that the development is permitted by LUC-2016-515 (per lot 1 of SUB-2016-103). The building consent site plan is shown below:



ABA-2019-455 – Building consent for a dwelling on Lot 3 of SUB-2016-103

- [36] Building consent to build on Lot 3 of SUB-2019-103 has been issued on 8 August 2019. This consent is subject to a Form 4, and no building work may commence until Certificate of Title for the site is issued. The proposed dwelling with attached garage is not within the dripline of tree protection zone of the 2GP, as it is the farthest lot from the subject tree.

ACTIVITY STATUS

Background to STEM analysis

- [37] The restriction on removal or pruning of trees is limited to a specific list of trees included as schedule 25.3 in the Dunedin City District Plan and the 2GP's Appendix A1.3 of significant trees. All trees listed in the District Plans have been assessed using the STEM (Standard Tree Evaluation Method) evaluation.
- [38] The STEM method has three distinct components, being condition (health) of the tree, the amenity (community benefit) that it provides and an additional 'bonus score' for notability (not always attributed). With regard to assessment of 'Condition' and 'Amenity', each tree is assessed and allocated points for the following factors:

- (i) Form
- (ii) Occurrence
- (iii) Vigour and vitality
- (iv) Function (usefulness)
- (v) Age
- (vi) Stature
- (vii) Visibility
- (viii) Proximity of other trees
- (ix) Role in the setting
- (x) Climatic influence.

[39] Items (i)-(v) are in relation to the condition of the tree. Items (vi)-(x) are in relation to the amenity the tree provides. With regard to its notability, points are allocated for recognition factors such as 'feature', 'association', 'commemoration', 'remnant', 'rarity' etc.

[40] The points received for each factor are totalled. Any tree that is allocated a sum total of 147 points or more is considered to be 'significant' and generally worthy of inclusion in the District Plan's schedule of trees. This number of points was therefore the 'benchmark' for considering the tree is significant, however, 147 points is not a universal 'benchmark' and other Councils in other cities may use a different number.

District Plan Status

[41] Dunedin currently has two district plans: the Operative Dunedin City District Plan ("the ODP"), and the Proposed Second Generation Dunedin City District Plan (the "the 2GP"). Until the 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.

[42] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.

[43] The Proposed 2GP was notified on 26 September 2015 and given legal effect on 7 November 2018. Some rules became fully operative following the close of submissions, where no submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved.

Operative District Plan

[44] The subject site is zoned as **Residential 1** in the ODP. Ferntree Drive is classified as a **Local Road**. The site is associated with one hazard: liquefaction (whole site).

- [45] Rule 15.5.1(i) of the Trees section of the Dunedin City District Plan 2006, states that the 'removal or modification of any tree or pruning, trimming or any other modification or activity within the canopy spread of any tree listed in Schedule 25.3' is a **Discretionary** (unrestricted).
- [46] Exemptions to this rule listed in Rule 15.5.1(i)(a) to (c) are not applicable to the application but are discussed below under the section titled 'permitted baseline'.
- [47] As such, the removal of this tree is a **Discretionary Activity** pursuant to Rule 15.5.1(i) of the ODP. Consequently, resource consent is required.

Proposed Second Generation Dunedin City District Plan

- [48] The subject site is zoned as **General Residential 1**. Ferntree Drive is a **Local Road** in the Road Classification Hierarchy of the 2GP. No other planning layers apply to the site.
- [49] Rule 7.3.2.3 of the activity status table of the Scheduled Trees Section states that the 'removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree' is a **Non-complying** activity.
- [50] It is noted that Rule 7.3.2.1 of the activity status table states that the 'removal of a scheduled tree that is: dead, in terminal decline or with extreme failure, or subject to a court order for removal' is a restricted discretionary activity. However, no court order has been obtained and no evidence has been submitted suggesting that the tree is dead or in terminal decline or at risk of extreme failure and thus it is not thought that the proposal fits this activity category.
- [51] As such, the proposed removal of the tree is considered to be a **Non-complying activity** in accordance with Rule 7.3.2.3.
- [52] This rule has been appealed by the University of Otago (ENV-2018-CHC-270) and as such is not yet fully operative. It is noted that the relevant appeal seeks for activities that breach this standard to be assessed as discretionary activities, rather than non-complying.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES")

- [53] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.
- [54] It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the proposal.

Overall Status

- [55] Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the

different components should be bundled and the most restrictive activity classification applied to the whole proposal.

- [56] In this case, there is more than one rule involved, and the effects are linked. As a result, having regard to the most restrictive activity classification, the proposal is considered to be a **Non-complying activity**.

NOTIFICATION AND SUBMISSIONS

- [57] No written approvals were submitted with the application.
- [58] The application was publicly notified in the Otago Daily Times on **19 August 2019**.
- [59] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on **13 September 2019**.
- [60] **Fourteen** submissions were received by the close of the submission period. Three submissions were in support, eleven submissions were opposed and no submissions were neutral.
- [61] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Jim Moffat on behalf of Protect Private Ownership of Trees Society (POTS)	Support	- Tree is a hindrance for applicant's future housing development at 3 Ferntree Drive - Tree is too large for its site/urban environment - Tree is a potential human health and safety hazard and may cause damage to surroundings in future - Housing need outweighs amenity provided by tree - Tree belongs to ratepayers and Council should pay to remove it	Yes
Peter Duglar	Oppose	- Protected trees should only be removed in exceptional circumstances and the application does not prove an exceptional circumstance - Effects described by applicant's arborist could be applied to any other tree - Tree more important than water mains, which can be moved if necessary - No emergency is evident regarding description of branches and water mains - Too many trees are felled in Dunedin for specious reasons - Silver Fir contributes to botanic environment for which Dunedin is renowned	No
Zacharia Raibn	Support	- Tree is a threat to infrastructure, the public and preventing housing development in well-established residential area - Prioritising housing is paramount in housing crisis, especially in areas with infrastructure and close proximity to town. - Tree is a danger to neighbourhood - Modern housing needed in Dunedin and removing the tree would show Council is pro-development	No
Tristan Pedersen	Oppose	- Resident of Ferntree Drive - Tree is part of area and a reason for moving to area - Area will devalue and be open and bare without the tree - Tree has been in area longer than applicants and its removal may not increase chances of selling the subdivided lots	No
Deanna Pedersen	Oppose	- People are amazed by beauty and grandeur of tree - Area is special for its tree filled beauty, a reason why people live in area	No

		- Concerned applicants are outsiders seeking financial gain - Tree is a rare species and should be protected at all costs	
Karen Pedersen	Oppose	- Resident of Ferntree Drive - Drives past tree daily and admires its beauty - Aware of trees in area prior to buying house and the big trees are a reason why bought in this 'green' area of Dunedin	No
Shanley Pedersen	Oppose	- Tree is very rare, magnificent species of a tree - Felling vital, strong, healthy specimen of a tree that is important to environment would be at odds with DCC declaring a Climate Emergency - Tree cleanses our air and protects us from carbon emissions - Tree forms part of visual beauty of Ferntree Drive and forms reason why people live/move to area - Concerned that applicants who reside in Christchurch should be able to 'destroy' a neighbourhood in Dunedin for financial gain	No
Sandra Ferguson	Oppose	- Resident of area - The tree's form and 'evergreen' are extremely attractive - Felling the tree would expose dead and unruly trees on opposite side of Ferntree Drive (that the subject tree currently obscures from submitter's viewpoint from her house) - Tree in good health and should remain with ongoing maintenance to ensure preservation - Been in neighbourhood close to tree for 20 years and not aware of fallen branches	No
Professor Gerald Closs and Robyn Sperling	Oppose	- Residents of Ferntree Drive for 14 years - Never felt unsafe using area/ concerned tree a risk to community and tree never dropped significant branches in this time - Disagree with assessment that tree is a danger to people or property – significant health and safety risk - The fir needles do not make the footpath more slippery than other footpaths and the neighbour did not slip on fir needles. - During ice and frost, the Ferntree Footpath is slipperiest where there are no trees present as sections under trees are rarely affected by frost - Footpath has not changed/uplifted significantly from roots and never found problematic when walking/cycling past - Any footpath damage does not justify removal of a tree as is easily fixed or mitigated - Tree has a highly visible connection to heritage of area. Ferntree Drive formerly part of the Ferntree Lodge historic property and tree close to original entrance -tree presents at the entrance to the Ferntree neighbourhood - The Raising of the tree's canopy has only slightly diminished the amenity of tree, when viewed from close proximity, when viewed from further away, the tree is a majestic, highly visible feature of the skyline - Tree provides an important habitat for Kereru, Tui and Ruru. Citing local study showing exotic trees provide valuable habitat for native and exotic birds (refers to 2016 Garden Study). - Loss of vegetation in gardens impacts native birds more severely (refers to 2014 study) and removing the tree would therefore contradict the DCC's Biodiversity Strategy - Refers to historic media reporting of area – providing evidence that the area is preserved for 'historic and aesthetic values' - The DCC architect on the original subdivision of the Ferntree area stated a minimum number of trees would be removed only to ensure 'woodland environment' maintained and a proposed development that never occurred sought to design a building to blend in with 'bushland setting'. Removal of tree would be inconsistent with original subdivision and preserving character of area - Feels house sits in extension of Ferntree Reserve, this was intention of original subdivision and reason for moving to area	Yes

		– forest surroundings, peaceful, tranquil environment with rich birdlife – tree forms key part of and contributes to this biodiversity/environment – its removal would reduce quiet enjoyment of area - Concerned applicants do not live in area and cannot be adversely affected by tree's removal and applicants motivated to have tree removed by inability to sell subdivided blocks of land, no appreciation of positive effects of tree on environment - Refers to recent resource consents for the subdivision and subsequent development of 3 Ferntree Drive (adjoining site). Notes the highlighting in those reports of tree's presence and District Plan restrictions on building within proximity to tree, refers to existing effects of tree and tree would not be removed at request of applicant	
John Beekhuis on behalf of Dunedin Amenities Society	Oppose	- Tree is of great beauty and one of only a few of this stature, age and species that remain in Dunedin. - Significant feature of area for over 90 years and should be retained for future generations - Provides great historical value to area and probably dates back to original owners of Ferntree Lodge and formed part of entrance to this property - Tree assessed as healthy and stable by DCC arborist on 28 February 2019 and tree able to be managed annually after weather events - Applicant specifically forewarned by resource consent report for the subdivision of 3 Ferntree Drive that tree protected and existing effects of tree should not be used as reason for removal where residential land use intensified in proximity to tree - Large healthy trees more effective at uptake of CO2 and should be retained rather than replaced with smaller less effective species. Felling tree would be counter to DCC Climate Change policy, especially where on Council reserves - Hypothesises that reserve at 5 Ferntree Drive created by DCC to specifically protect tree and vegetation to maintain the tree lined character	Yes
Timothy Medicott	Support	- Building house on top section of Ferntree Mews 3 –lot subdivision - Concerned tree will split in half during storm and impact future house - Tree is exotic and out of place in area of native bush - Tree will shade property from morning sun	No
Robyn Selbie	Oppose	- Tree important enough to be listed by DCC, removal makes a mockery of status - A species tree planted by Dunedin early settlers, reflecting homelands they came from - Provides landmark feature of suburb and has stood for 90 + years, causing no damage to residents/no problems to date, cannot replace a tree of this antiquity overnight - Not a busy area – little foot traffic - Tree provides home for birds and insects - Removing will go against greenery of city - Tree has historic value, provides character and to city - Applicant's arborist shows remediation can occur as opposed to felling, can be future proofed against damage - Applicant bought section aware tree protected	No
Malcolm and Jo Burns	Oppose	- Residents of Ferntree Drive for more than 5 years, tree is key reason why bought in area - Involved in Forestry Industry for 30 years, currently a Forrester Manager - Tree has great historical significance – stood at gateway to Ferntree Lodge and sits as gatekeeper to community - Tree sits proudly on its own in the skyline and has an aura of power and strength when viewed from neighbourhood and Roslyn Village	Yes

		• Tree's age, history, stature worth more in the long term than the applicant's short term financial benefit. • Concerned application relates directly to influencing the value and aesthetics of development at Ferntree Mews • Subdivision should never have been granted as tree would become a barrier to development – compromising its protection • The subdivision resource consent states clearly that the tree is in good health and should be protected • Criticises Applicant's arborist report: ○ For stating many children use the walkway when this is not true and many mature trees line footpaths that other communities use ○ Submitter states tree sitting in sheltered area and Fir species that establish independently grow very strong with branch and nodal growth to protect themselves. The subject Fir has grown in completely different environments to the Chingford Park examples used by applicant's arborist. Believes the Chingford Park examples are in plantation environment, protecting them from elements and therefore more susceptible to breaking in stormy weather. Ferntree Drive not susceptible to high winds as nestled in gully • It is trees on other side of Ferntree Drive that cause mess on carriageway, not the subject tree. Using similar logic would mean removing many other trees in city.	
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ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[62] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including–

- a) *Any positive or adverse effect; and*
- b) *Any temporary or permanent effect; and*
- c) *Any past, present, or future effect; and*
- d) *Any cumulative effect which arises over time or in combination with other effects–*
regardless of the scale, intensity, duration or frequency of the effect, and also includes –
- e) *Any potential effect of high probability; and*
- f) *Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

[63] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.

[64] The removal, modification, pruning, trimming or activity within the canopy spread of any tree listed in Schedule 25.3 is a Discretionary activity the ODP. There are three exceptions to this activity status, which are as follows: where the work amounts only to minor trimming and maintenance and is undertaken by hand-operated pruning shears or secateurs in accordance with accepted arboricultural practice; or the work is required as emergency work to safeguard life or property and is carried out by the Council or a

statutory authority; or the tree or trees are subject to an order for removal or modification in terms of Section 129(C)5(a), (b) and (c) of the Property Law Act 1952.

- [65] None of these listed exemptions to a discretionary activity status apply to the current situation. It should be noted that the applicant applied for the emergency removal of the tree but Council's arborist indicated that the tree posed no imminent risk to life or property and its immediate removal (or removal at all) was not necessary. The application was subsequently processed as a standard resource consent for the removal of a scheduled tree. Therefore, in the absence of a court order or any new evidence of an emergency/imminent risk of danger, there is no permitted baseline under the ODP for the removal of a scheduled tree.
- [66] The effects pertaining to the 'minor trimming and maintenance undertaken by hand-operated pruning shears or secateurs in accordance with accepted arboricultural practice' could be considered permitted in terms of the ODP, as per the above exemption. The effects of modification are considered to have limited relevance to the present application, which is to remove the tree altogether.
- [67] In terms of the 2GP, the removal of a scheduled tree that is: dead, in terminal decline or with extreme failure, or subject to a court order for removal is a restricted discretionary activity. In addition, the modification of a scheduled tree is also a restricted discretionary activity, subject to compliance with the 'best arboricultural practice' performance standard.
- [68] The 2GP therefore provides no permitted baseline for any form of work on a scheduled tree or the removal of a scheduled tree, as even in the case of a court order or emergency situation, resource consent is still required as a restricted discretionary activity.
- [69] For completeness, it is noted that both the applicant's arborist's assessment and the Council's arborist's assessment do not suggest that the tree is dead, in terminal decline or with extreme failure.
- [70] In terms of the activities that may take place within proximity of a scheduled tree, the 2GP excludes buildings, structures, additions and alterations, public amenities, all earthworks, new roads or additions or alterations to roads, network utility activities and site development activities from the dripline of the tree or distance from a tree that is half the height of the tree (whichever is greater). Activities employing trenchless methods (the installation of pipelines and cables below the ground with minimal excavation) are exempt from this 'exclusion zone' where a number of requirements are met. Therefore, while the 2GP expands the 'exclusion zone' within which works can occur in proximity to a scheduled tree, it also provides a permitted baseline for the installation of pipes where the required circumstances are met.
- [71] Overall, it is not considered that there are any relevant 'permitted effects' in terms of activities that may be undertaken within proximity on a scheduled tree (including removal), that could feasibly be disregarded when considering the effects of the proposed removal. This is because the removal of the tree will kill the tree.
- [72] In terms of the consented environment, resource consent has been granted for the establishment of residential activity with reduced yards on the adjoining site at 3 Ferntree Drive. Once title is issued for the 3 new lots on the adjoining site, 3 new dwellings can be established on each lot, subject to complying with the land use and development performance standards of the District Plans. Dwellings can be built prior to title being issued, however, this is not the intention as the applicant has already applied

for s224(c) certification. The density of residential activity on the adjoining site is thus to increase threefold than what was previously in the vicinity of the subject tree.

- [73] However, as noted above, any impermeable surfaces, structures, dwellings etc. within a distance amounting to half the height of the subject tree may not occur without resource consent. The driveway has already been established within the 2GP exclusion zone of the subject tree (prior to the rules becoming operative) but not within the dripline of the tree, and services have been laid for the subdivision (as per resource consent LUC-2019-61 described above).
- [74] The subject tree overhangs Lot 1 (and potentially Lot 2) of this adjoining site. While resource consent was granted for various reduced yards on each of these lots (see LUC-2016-515 above), these yards relate to site boundaries and do not expressly or impliedly relate to establishing a dwelling or structure (or any excavation or impermeable surface) within the dripline of the tree. The consent report makes clear that any activity within the dripline of the tree would require resource consent and makes note of the 2GP rules (proposed at the time) extending the distance from the tree that exclude essentially all activities without having obtained a resource consent first (once the rules had legal effect and/or were operative).
- [75] The removal of most non-protected trees in the residential zones is permitted by both District Plans, with the exception of indigenous vegetation in some circumstances. Any tree removal is also subject to landowner approval, which in this case is the Council.
- [76] The existing and reasonably foreseeable environment consists of a residential area tucked in a cul-de-sac gully to the west of Taieri Road and in close proximity to a recreation reserve containing native and exotic bush. Residential activity is permitted at a density of 1 residential unit per 500m² of residential land. Ferntree Reserve is zoned as residential land under the 2GP, despite its recreational character. However, this reserve belongs to the Dunedin Community and Recreation Department, is vested as reserve land under the Reserves Act 1977 and has an open watercourse running through it (which feeds into the Kaikorai Stream). The foreseeable environment in relation to this reserve area does not therefore include residential activity. In addition to the reserve, several road reserve trees are protected on the opposite side of Ferntree Drive, as noted above. These large larch trees are scheduled in both District Plans and thus form part of the foreseeable immediate environment.

Assessment of Effects

- [77] The activity status of the proposal has been deemed a **non-complying activity** overall. While Council's discretion is not limited to certain matters for non-complying activities, both District Plans list a number of relevant matters of discretion provided below.
- [78] Council received the following expert advice (attached as Appendix 3 of this report) to inform the assessment of effects in pertaining to the application:
- Mr Mark Roberts, Arborist, from Roberts Consulting Ltd, provided Council with arboricultural expert evidence on the application. Mr Roberts provided a re-assessment of the condition section of the STEM, and provided comment on the applicant's arborist's report (undertaken by Mr Peter Waymouth). Mr Roberts has previously commented on prior resource consents to modify the subject tree/work in the dripline of the tree. He has also visited the site previously on behalf of Council to provide prospective buyers of the lots of SUB-2016-103 with

arboricultural information and options for construction and development within the dripline of a protected tree. This history is outlined at the top of his report attached to this report as Appendix 3.

- Mr Luke McKinlay, Council's Landscape Architect, provided expert advice on the application in relation to the amenity effects of the proposal. He reassessed the amenity section of the STEM evaluation.
- Mr Steve Rowland, Council's Urban Forest Officer, provided expert evidence on the application on behalf of the Parks and Recreation Department. It should be noted that the Parks and Recreation Department are also the landowner of the subject site and landowner approval for the removal of a reserve tree would be required as a separate process where resource consent was granted for the tree's removal.
- Council's 3 Waters Department provided comment on the water and waste infrastructure within proximity to the tree.

Operative District Plan

[79] The assessment of effects is guided by Section 15.6 (Trees) and the assessment matters in Sections 8.13 (Residential Section) of the Operative Dunedin City District Plan. Accordingly, assessment is made of the following effects of the proposal:

- Effect of modification (Assessment Matter 15.6.1);
- Reasons and alternatives (Assessment Matter 15.6.2);
- Amenity values and Character (Assessment Matters 15.6.3 and 8.13.5);
- Indigenous Vegetation and Fauna (Assessment Matter 8.13.15);
- Safety (Assessment Matter 8.13.12);
- Positive Effects;
- Cumulative Effect (Assessment Matter 8.13.13); and
- Infrastructure.

Proposed District Plan (2GP)

[80] The assessment of effects is guided by Rule 7.8.2.1 of the 2GP. This rule came into effect in November 2018 and accordingly, assessment is made of the following applicable effects of the proposal:

- There is significant risk to personal/public safety or risk to personal safety that is required to be managed under health and safety legislation
- There is a moderate to significant risk to buildings
- The removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities, or

- Removal of the tree will result in significant positive effects in respect of the efficient use of land.

[81] In addition, the assessment criteria refers to Objective 2.4.1 and Policy 2.4.1.2 of the Strategic Directions section, which provide the following 'matters of discretion':

- The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include: trees that make a significant contribution to the visual landscape and history of neighbourhoods (Objective 2.4.1(b)).
- Policy 2.4.1.2 refers to the creation of the schedule on the basis of 'trees that make a significant contribution to the visual and historical landscape and amenity of neighbourhoods and other places' and the STEM criteria used to evaluate their inclusion.

Effect of Modification, Condition and Amenity Values (STEM assessment) (Assessment Matters 15.6.1 and 15.6.3 of ODP and Policy 2.4.1.2 of 2GP)

Condition of the tree

[82] As noted above and within Policy 2.4.1.2 of the 2GP, the STEM evaluation provides the basis for the inclusion and protection of certain trees within the District Plan. The first section of the evaluation relates to the condition of the tree. The 2001 STEM assessment of the tree provided a score of 87 for the condition of the tree; specifically, the tree was awarded the following points for each category, where 3 is the minimum number of points awarded for each category and 27 is the maximum number of points awarded for each category: Form: 21 ('very good'); Occurrence: 21 ('Rare'); Vigour and Vitality: 15 ('Good'); Function: 15 ('Important'); and Age: 15 ('40+ years').

[83] Mr Roberts undertook a site visit and inspected the tree from ground level on 7th August 2019, he noted at the time of inspection that the land under and around T444 to the west had been cleared of buildings and divided (fenced off) into sections, and that the weather was clear and calm at the time of the visit.

[84] Mr Roberts describes the tree at the time of inspection to be in good health and have vitality within the normal range for the species and age. He described the tree's canopy as evenly foliated throughout and concludes in relation to a callus growth around previous pruning works that the tree has good vigour. He notes the tree has good trunk taper and appeared to have good root flare, and that the root flare had encroached over and had lifted a section of footpath on Ferntree Drive.

[85] Mr Roberts notes the development of a second 'leader' at approximately 14m up the main trunk and a 3rd leader higher up at approximately 22m. He notes that *Abies* are typically considered a single trunk or leader species. In relation to the angle of the 2 'leaders' and a lower branch (as described in the applicant's arborist report), he agrees with the applicant's arborist that the presence of included bark is indicated. He provides the following analysis of the presence of included bark:

Included bark can be an indication of a weakened branch union (a poor structural connection between the branch and trunk). While it is true that some included bark unions have the potential to completely split away from the main trunk, many do not and research into the actual strength loss and the process of 'natural bracing' (where branches from the branch and/or trunk bypass each

other) suggest that such unions are not as problematic as they once were considered.

Trees with included bark are very common, for example; there are several smaller trees within the Ferntree Drive 'pocket' reserve that have included branches, and most of the Larch trees on the opposite side of the road also have them, none of these branches has failed

- [86] Mr Roberts concludes this section of his report on the condition of the tree by stating that overall, the tree appeared to be in good condition, and he saw nothing to suggest that whole tree, partial or branch failure was imminent. He also notes that based on the collective observations of three previous visits to the site, that, in his opinion, the tree is not in decline and there was nothing to indicate that decline was likely in the near future.
- [87] Mr Roberts provides a reassessment of the condition of the tree in terms of the STEM evaluation methodology, as follows: (Form: 15 ('Good'), Occurrence: 15 ('infrequent'), Vigour & Vitality: 21 ('Very good'), Function: 15 ('Important') and Age: 21 ('80 years+')). Mr Robert's subtotal for the condition assessment is 87 points, which is the same subtotal as Council's 2001 assessment. Despite the same subtotal, Mr Robert's analysis differs from the Council's 2001 assessment in all categories, with the exception of 'Function', which he has awarded 15 points, as was awarded to this category in 2001. He awards less points than in 2001 STEM evaluation for the tree's form.
- [88] Mr Waymouth, on behalf of the applicant, gives the tree a subtotal of 69 points for the condition of the tree. He includes a copy of Council's 2001 STEM assessment in the report to highlight where he has attributed points in comparison to the Council's analysis. In terms of condition, Mr Waymouth attributes the following points for each category: Form: 3 ('Poor'), Occurrence: 15 ('infrequent'), Vigour & Vitality: 15 ('Good'), Function: 15 ('Important') and Age: 21 ('80 years+').
- [89] Mr Waymouth therefore attributes less points for 'form' and 'occurrence' and the same points (21) for 'vigour and vitality' and 'function' when compared to the 2001 assessment.
- [90] In terms of the age category, the tree is also older than initially thought, and thus more points are acquired in the age category than originally attributed in Council's 2001 assessment. Both Mr Waymouth and Mr Roberts agree that the tree is in the vicinity of 90 years old, and both arborists have attributed 21 points to the tree in this category accordingly. As this point is not disputed, no further discussion of this category is required. Similarly, both arborists agree that the function of the tree is 'important' and this is reflected in the 15 points awarded to the function category. This is consistent with the 2001 STEM evaluation and therefore, no further discussion of this category is required. In terms of the occurrence category, both arborists have provided a score of 15 points. This score demotes the tree from 'rare' (21 points) to 'infrequent' (15 points) when compared to the 2001 assessment. As both arborists agree on the appropriate point attribution for this category, no further discussion is needed.
- [91] In terms of the 'form' of the tree, Mr Waymouth attributes the lowest number of points here, and in his opinion the tree has a 'poor' form. The 2001 assessment provided a score of 21 – concluding the tree has very good form. Mr Roberts has attributed the form of the tree 15 points, and therefore concludes the form of the tree is 'good'. The disparate valuations in the 'form' category appear to be related to the raising of the canopy of the tree (also known as crown lifting), for which resource consent was granted in 2018 (LUC-2018-86). Mr Waymouth also notes that the structural defects of the tree

stand out clearly (he is referring to the 3 branches referred to in his report). Mr Waymouth places weight on the fact that in his opinion the tree is not 'reliable in structure' because he has assessed the branches or 'defects' as constituting a potential health and safety risk (discussed below).

- [92] Mr Roberts is critical of Mr Waymouth's assessment of the form of the tree and is also critical of Mr Waymouth's application of the STEM analysis. He states that Mr Waymouth uses a self-adapted STEM assessment form which introduces words not used or described in the accepted standardised method. He therefore states that Mr Waymouth's evaluation and his own evaluation is not directly comparable as Mr Waymouth's version of STEM is not the same as the standardised method used to evaluate the tree. Nonetheless, on the point of form, Mr Roberts makes the following comments, referring to Mr Waymouth's evaluation:

In Mr Waymouth's opinion the tree has a Poor form due to the raising of the canopy; 'its original aesthetic charm has been entirely lost by the raising of its canopy'. It should be noted that the raising of the canopy was undertaken at the request of the applicant (LUC-2018-86). There is no definition for Poor Form given in the glossary or definition of terms included in the STEM publication. According to STEM; form requires a comparison of known examples of local trees within the district. The New Zealand Tree Register (NZTR) holds detailed information on notable trees in New Zealand, there are two Abies listed in Dunedin that are considered 'notable' trees in the context of all of New Zealand. The 'form' of T444 is consistent with if not better than both of those notable examples.

The 2001 DCC STEM evaluation records the 'Form' of T444 as 'Very Good', due to pruning works undertaken at the request of the applicant it is possible that the tree has dropped from Very Good to Good or even down to Moderate, but it is unreasonable to consider that the 'Form' of this tree is Poor.

- [93] In terms of the vigour and vitality, Mr Waymouth has attributed the same number of points as the 2001 STEM evaluation (15) assessing the tree as having 'good' vigour and vitality. He comments that this status may not remain, however, and highlights that there would have been some feeding root loss associated with the subdivision works on the adjoining site (grading and compaction). He also points out a large girdling root potentially affecting the stability of the tree. In addition, Mr Waymouth notes that the impervious surfaces across the 3 subdivided sites (at 3 Ferntree Drive) is likely to increase to over 70% of the land in the subdivision (particularly on Lot 1) affecting the moisture retention levels in the soil and ultimately the tree will lose this water source (affecting its vigour and vitality).
- [94] On this point it should be noted that while building consent has been granted for the building on Lot 1 of SUB-2016-103, the dwelling is 150m² in area only. While the right of way area does occupy a large amount of Lot 1, the subdivision consent (and consent notice) requires any 'accessway' and/or any infrastructure to be installed within the protected root zone of the tree, to have structural suspended pavement cells (Silva Cell) or similar employed to avoid excavation (Condition 3(f) of SUB-2016-103). This is an ongoing requirement for the site as it is a condition to be contained within a consent notice. It should be further noted that the 2GP introduces a 'Maximum Building Site Coverage and Impermeable Surfaces' performance standard which allows a maximum building site coverage percentage of 70% across each site. Therefore, any development exceeding this site coverage would require resource consent. It is therefore not considered likely that the "impervious surfaces across the 3 subdivided sites (at 3 Ferntree Drive) is likely to increase to over 70% of the land in the subdivision" as Mr

Waymouth states. However, it is accepted that development on this adjoining site has the potential to adversely affect the tree's access to water.

- [95] Further to this, development on Lot 2 is subject to the new 2GP rules in terms of activities within the tree protection zone of the tree. As per section 10B of the Resource Management Act, Lot 1 can be built on as building consent has already been granted prior to the operation of the 2GP rules, but it should be noted that this building consent will lapse in approximately 2 months' time and where this building consent is not given effect to prior, future development on the site will need to comply with the 2GP rules. In the case of lots 1 and 2, these lots are within the tree protection zone of the tree under the 2GP and resource consent will be required for any activity within this zone and the adverse effects on the tree will be assessed and either avoided or mitigated as a requirement of consent.

- [96] Mr Roberts maintains a significant difference in opinion on the assessment of vigour and vitality and states as follows in Paragraph 2.2.5 of his report:

Under Vigour and Vitality, Mr Waymouth notes possible future changes due to loss of feeder roots as a result of potential movement of the water table change in grade and compaction. These potential future changes have not been confirmed, but internet images on Google Street View would indicate that the area in question has actually been used as a driveway and parking area since at least 2009. There is no parking or street access indicated in the proposed changes, therefore it is equally possible that there will be less compaction and an improved growing environment for this tree due to possible future changes.

- [97] Mr Roberts highlights that the tree has adapted to the former residential occupation of the site and while the future occupation may be more intensive, adverse effects on the tree can be mitigated and potentially avoided.

- [98] Overall, no evidence has been provided on behalf of the applicant, or on behalf of Council's experts that suggest the tree is dead or that the tree is in terminal decline. Mr Roberts described the condition of the tree as 'good health' and in Mr Waymouth's risk assessment, he indicates that the tree has 'normal' vigour under the 'Tree health and species profile' on page 6 of his report. While less points have been attributed by Mr Waymouth to the 'form' category, meaning the overall subtotal of points for the condition of the tree is lower, this appears as more of an amenity consideration and does not appear to have any implication (in this case) for the condition of the tree in a health sense. This is especially so where the 'structural defects' of the tree are addressed by pruning, as Mr Waymouth places weight on the 'structural stability' of the tree in his assessment of its 'form'. In terms of the vigour and vitality of the tree, Mr Waymouth has placed weight on the potential for future adverse effects on the tree when the adjoining site is developed. While Mr Waymouth has not subtracted points from this category when compared to the 2001 STEM assessment, Mr Roberts believes the tree has very good vigour and vitality and has attributed more points here for the STEM assessment. In terms of the STEM evaluation, it is my opinion having viewed all of the evidence that overall the condition of the tree can be considered good, if not very good, and that the tree's condition is largely the same as in 2001, meaning that the tree warrants continued protection in the schedule in this regard. The development on the adjoining lot may adversely affect the tree, but any development can be assessed at the time in relation to the tree and construction methods can be implemented to ensure the lowest impact on the tree occurs.

Amenity of the tree

[99] Mr Waymouth, on behalf of the applicant, gives the tree a score of 75 for the amenity evaluation of the tree, amounting to a total point score of 144 for the tree overall (when added to the condition evaluation subtotal). He includes a copy of Council's 2001 STEM assessment in the report to highlight where he has attributed points in comparison to the Council's analysis. In terms of amenity, compared to the 2001 assessment, Mr Waymouth attributes more points for stature, the same for visibility, role and climate and less for the proximity category. Mr Waymouth notes the aesthetic charm of the tree has been entirely lost by the raising of the canopy. Mr Waymouth's point attribution in the amenity category is as follows: Stature: 27+ (in meters); visibility: 1.0 (in kilometres); proximity: 9 ('parkland'); Role: 15 (important) and Climate: 15 (important).

[100] Mr Roberts on behalf of Council has not attributed points to the amenity category of the STEM assessment as this part of the evaluation is provided by Council's Landscape Architect – Mr Luke McKinlay. However, Mr Roberts has commented on Mr Waymouth's assessment in the 'proximity category' under amenity. Mr Waymouth has attributed a 'parkland' setting to the tree, whereas the tree has previously been assessed as being 'solitary' under the 'proximity' category. Mr Roberts makes the following comments on this point:

Under proximity, Mr Waymouth has moved the tree from Solitary down to Parkland because it is 'almost part of Ferntree Reserve'. There is no definition for a Parkland given in the glossary or definition of terms included in the STEM publication. The STEM Form (the score sheet) indicates that a Parkland consists of more than 10+ trees but has less trees than a forest. According to the Oxford Dictionary, a parkland is 'open grassy land with scattered groups of trees' and a forest is 'a large area covered chiefly with trees and undergrowth'.

[101] He further notes that based on Mr Waymouth's use of STEM, almost every tree in the suburban environment could be classed as existing on a Parkland. Mr Roberts doubts that Mr Waymouth's use of STEM is in line with the intention of STEM and does not think that T444 can be classed as existing on a Parkland.

[102] Mr Luke McKinlay agrees with Mr Roberts on this point. Mr McKinlay provides the following comment on the 'proximity' category of the tree:

The 2001 council STEM assessment of T444, resulted in a total amenity 'score' of 87. The largest component of this score was for the proximity component, where the tree scored 27 as a 'solitary' tree. Mr Waymouth reassessed the tree and reduced the proximity score from solitary to 'parkland' (9 points).

The proximity criterion of STEM identifies the potential significance of a lone tree in an urban situation. The rationale for this is that one tree in a street or in a bare field draws attention to itself, meaning the fewer the trees the more they are valued. On the other hand, The STEM manual identifies that a tree could potentially be 'lost' in a block or group of trees, without dramatically changing the overall impact in the composition of a vista. Importantly, the manual identifies the following – "should a situation arise where a single tree dominates its many smaller neighbours, this tree would lose merit points in this section but would gain high points in e.g. stature, visibility, role in setting and climatic influence". In my assessment, this last point is relevant to the subject tree. While separate from the Ferntree Reserve trees by the Ferntree Drive carriageway, T444 is in relatively close-proximity to these trees and those within the council reserve. As such, it is agreed that T444 should not be assessed as a solitary tree.

Rather, it is my assessment that it forms part of a group of 10+ trees (15 points). I do not agree that it forms part of a parkland setting as suggested by Mr Waymouth. In my opinion, a parkland assessment would more accurately describe the setting of the Silver Fir in Chingford Park, which Mr Waymouth refers to (an image of which is shown on page four of his assessment).

- [103] Mr McKinlay therefore acknowledges that the 2001 STEM assessment failed to take into account the role of other trees within proximity to the tree, but stops short of considering that the tree is in a 'parkland' setting like Mr Waymouth. After consideration of all viewpoints, I consider that Mr McKinlay's assessment, as largely supported by Mr Roberts, is the most appropriate description of the tree in its setting and not the 2001 description of the tree being 'solitary'. The trees located on the opposite side of Ferntree Drive are also scheduled trees in the District Plans and thus their presence in relation to the subject tree is more permanent than any non-protected tree and this should be reflected in the points awarded in the proximity category.
- [104] Mr McKinlay provides the following re-evaluation of the 2001 STEM, resulting in a subtotal of 87 points for the amenity section: Stature: 27+ (27 points); Visibility: 1km (9 points); Proximity: Group 10+ (15 points); Role: Significant (21 points); Climate: Important (15 points). This is consistent with the total points attributed to T444 in the 2001 assessment (87 points). Mr Waymouth has attributed the same points for the visibility and climate categories and therefore these categories require no further comment. The tree's proximity, as discussed above, is most appropriately described as within a group of trees. Both Mr Waymouth and Mr McKinlay agree that the stature of the tree has increased in meters since the 2001 STEM assessment and have both awarded 27 points in this category as the tree is over 27m in height.
- [105] Mr McKinlay has awarded 21 points to the tree in terms of its role, while Mr Waymouth has maintained 15 points for this category, consistent with the 2001 STEM assessment. Mr McKinlay visited the site on the 7th August 2019 to determine the likely effect of the proposed removal of T444 on existing visual and landscape amenity values.
- [106] He makes the following comments in relation to the context/setting of the tree, from which he has formed his view on the 'role' of the tree:

Ferntree Drive is located in a residential Wakari. It connects with Dean and Wairoa Streets at its southern end and terminates in a cul-de sac at its Northern end. Most dwellings are located on the western side of the street. Ferntree Reserve and the grounds of Ferntree Lodge occupy large areas to the east. The street is moderately steep for most of its length. There is a flatter portion in the vicinity of the turning area in front of Ferntree Lodge.

The subject tree is located near the southern end of Ferntree Drive, adjacent to number 3, on the western side of the street. Directly opposite the tree, is a band of road reserve planting, to the west of 14 Dean Street.

T444 forms a prominent feature from both the southern and northern approaches on Ferntree Drive (refer figures 1 & 2). Due to its stature and close-proximity to the street, T444 is a primary focal feature of the streetscape. A relatively uncommon species in Dunedin, T444 is visually distinct from the nearby trees within Ferntree Reserve. Not only is it separated from these trees by the street itself, its height and relatively narrow, evenly foliated canopy set it apart from the reserve trees. From locations to the west, such as the walkway to Hood Street, the height of T444, above that of neighbouring vegetation is most apparent (refer figure 3).

As noted in the GreenTrees report, pruning of the lower limbs to raise the canopy of T444 was undertaken last year (LUC-2018-86). Mr Waymouth makes the following comments on the appearance of the tree following this work - "its original aesthetic charm has been entirely lost by the raising of its canopy". I consider that the effects of the pruning are somewhat overstated by this statement. Prior to pruning, the lower branches almost extended to the ground (as shown in the photo attached to the 2001 STEM assessment). This is relatively uncommon for street trees of this size, where they are located adjacent to footpaths and a clear pathway for pedestrians is required. As such, while the change in the appearance of the tree is highly noticeable, I consider that the effects of the crown lifting on the appearance of T444 are not as high as suggested by Mr Waymouth, particularly in this suburban context. Crown lifting is not uncommon in suburban/urban environments and the upper two thirds of the tree remain well foliated. It is my assessment that the tree retains considerable aesthetic value and this is reflected in the updated STEM assessment, outlined below.

- [107] Mr McKinlay concludes that the role of this tree is significant in the streetscape of Ferntree Drive given its visual prominence from both northern and southern approaches and its likely historic association with Ferntree Lodge. So while Mr McKinlay has not added any additional points to the notable evaluation component of the STEM assessment for the historical significance of the tree, he has placed some weight on this factor and this has resulted in a higher score for the tree's 'role' in its setting. I believe that while there is a level of uncertainty around the exact role of the tree historically, the aerial photographs and historic plans showing the subdivision of the area do add a historical significance to the tree's status and that this should be reflected in its amenity 'scoring'.
- [108] This conclusion is consistent with the general sentiment expressed in submissions received from people currently living in the area. All of the submissions received on the application from residents living in the area oppose the tree's removal. Many resident submitters describe the tree as a key contributor to the area's character and as a key part of the appeal of the area. They note its evergreen characteristic; the habitat it provides for bird and insect life; its beauty and grandeur and the visual connection it provides to the historic area of Ferntree Lodge. Many submitters also note the age, size and species of the tree and its uptake of CO₂, having a positive contribution on the environment and unable to be replaced by the applicant's proposed mitigation planting.
- [109] On the point of CO₂ uptake, Council's arborist makes the following comments on the existing contribution of the tree to the environment and the proposed contribution potential of the mitigation planting:

The suggested replanting offer in Mr Waymouth's report is completely disproportionate to the loss of T444 and it is inconsistent with intent of the DCC to become a net zero carbon city.

The current volume of T444 is approximately 2,300m³. The volume of the suggested replacements (rhododendrons and/or camellias) will eventually grow to become approximately 8.5m³ each (once established to a height of 2m.) The collective mitigation on offer might reach 100m³ of once established compared to the current carbon sequestration potential of 2,300m³ that the applicant is asking to remove.

The number of plants and/or suggested plant species on offer will represent substantial net carbon loss to the city. If the DCC has any hope of becoming a net

zero carbon city then the mitigation on offer needs to at least be eventually capable of replacing that what it has agreed to remove – the number of plants and/or suggested plant species on offer in this report cannot achieve this.

- [110] Mr McKinlay agrees that in terms of amenity, the proposed replacement planting of rhododendrons, camellias, azaleas and viburnums to complement the existing planting near the frontage of 3 Ferntree Drive, would be insufficient to maintain amenity values provided by T444. He acknowledges that it is very difficult to mitigate for the loss of such a large, prominent tree, however, its replacement with a selection of flowering shrubs/small trees appears of insufficient scale to compensate for the loss of this tree.

- [111] Mr McKinlay has provided an assessment on the amenity effects of pruning recommended by the applicant's arborist to mitigate the health and safety effects (discussed below) posed by the tree. The assessment matter of 'effect of modification' requires consideration of 'the health and quality of the tree, and the effect of any proposed pruning, trimming or other modification to the tree'. Mr McKinlay states:

One of the recommendations of the GreenTrees report is that T444 is pruned using reduction cuts on the tree 'shaded sail areas' in order to lessen end-weight. It is my assessment that if this pruning involves approximately a 10-15% reduction in the length of the branches, effects on the amenity of the tree are likely to be low. Given the size of this tree, that extent of pruning, is unlikely to be highly noticeable to the general public or result in the tree appearing significantly unbalanced. Despite the presence of second and third leaders, which would be subject to the pruning, the tree retains a generally balanced, conical form, which a 10-15% end reduction would not compromise to a significant degree.

If, rather than reduction pruning, the entire tree is removed, effects on streetscape amenity would be considerable. Due to the height and considerable age of this tree, it is likely that T444 has become a well-established and highly prominent landmark within this neighbourhood. Abies alba is a relatively rare species in Dunedin and makes a considerable contribution to the diversity of exotic tree specimens in the city.

... If it is determined that some pruning is required to address potential safety issues, it is considered that reduction cuts are unlikely to result in unacceptable adverse effects on existing amenity values of the tree or cause the amenity component of the STEM assessment to be notably affected.

- [112] Overall, it is considered that the tree maintains a significant contribution to the amenity of the area and as evidenced by the opposing submissions provides a sense of identity for residents in area that is connected to the history of the site. Any doubt cast by the applicant's arborist on the condition and amenity contribution of the tree is not supported by Council's experts, and is also not supported by submitters currently living in the area. The tree warrants ongoing protection for the reasons provided by Mr McKinlay and in submissions opposing the application. The proposed pruning of the tree to mitigate the health and safety effects is not considered to reduce the tree's value or contribution. The tree's removal would adversely affect the amenity values and character of the area and these adverse effects would not be mitigated by the proposed planting. Conversely, where the tree's health and safety effects can be mitigated by the proposed pruning, the amenity contribution of the tree can be maintained.

Reasons and alternatives, risk to personal/public safety, effects on buildings (Assessment Matters 15.6.2 and 7.8.2(1)(c))

Health and safety risk and reasons and alternatives

- [113] The principal reason provided by the applicant for the removal of the scheduled tree relates to the assessment by the applicant's arborist that 3 branches of the tree pose a health and safety risk to people and property at 3 Ferntree Drive. The applicant's arborist, Mr Peter Waymouth, has deemed the branches as a high risk to people and property using the ISA (International Society of Arboriculture) method of tree risk assessment. Mr Waymouth notes that while the ISA risk form is used, it has been adapted by him.
- [114] Mr Roberts is critical of Mr Waymouth's risk assessment and believes there are inconsistencies in Mr Waymouth's report regarding his use and application of the tree risk assessment methodology TRAQ (Tree Risk Assessment Qualification). Mr Roberts provides the following comment on Mr Waymouth's assessment:

TRAQ is a risk assessment tool designed to determine the amount of risk a tree or tree part poses on a given target over a given time period. The stated aims of TRAQ are; i) to provide a systematic process for assessing risk, ii) to provide confidence in professional and ethical decisions, and iii) to provide a standardised process throughout the industry.

Mr Waymouth uses a self-adapted TRAQ risk assessment form, and not the form created and provided by the International Society of Arboriculture (the owners and creators of the methodology).

From my understanding of Mr Waymouth's form, he is indicating that there is a High risk that three branches will fall from the tree before July 2020 and two will impact the dwellings and cause significant damage or will cause harm to the people who are living there. He has also indicated that there is a high chance that the same branches will fall onto property and people on the public road before July 2020 causing significant damage or harm.

To achieve a High-risk rating Mr Waymouth has over-stated the occupancy rating and the effective area of the target zone.

According to TRAQ; "the amount of time one or more targets are within the target zone - its occupancy rate - is the primary component of assessing the likelihood of a target being impacted". To generate a High-Risk Rating, Mr. Waymouth has stated the targets (the people, dwellings and road users) have a Frequent or Occasional occupancy rate.

A 'Frequent' occupancy according to TRAQ "indicates that the target zone is occupied for a large portion of the day or week". At the time of his assessment, there were no houses on the site or people living in those houses. It is not reasonable to expect that occupancy of the targets (the yet to be built houses and/or the people living in those houses) could spend enough time within the target zone to be given a Frequent occupancy classification.

Mr Waymouth rates the occupancy of property within the subdivision and public road users as being Occasional. A building is a static object, therefore it has a Constant occupancy (i.e. it can't leave the target zone, so it must be in the zone 24 hours a day, 7 days a week). For property inside the target zone to have an

occasional occupancy rate, it must not be there for a large portion of the assessment period – this can only be possible the buildings are built towards the end of the assessment period. People are classed as mobile targets (i.e. they can move into and out of the target zone). If the buildings inside the target zone have an occasional occupancy and people can come and go from those buildings, then by default, people must spend less time in the target zone than the building. According to TRAQ, less than Occasional is Rare. At best, the occupancy rate of people within the target zone could be classed as Occasional but is more likely to be Rare according to TRAQ methodology.

[115] Mr Roberts concludes that you cannot generate a High-Risk Rating using TRAQ, when that target has an Occasional occupancy as regardless of the potential consequences, if the target is unlikely to be there when the failure happens, they are unlikely to be impacted. Mr Roberts further points out that Mr Waymouth has erroneously included the pedestrians/users of Ferntree Drive within the target zone of the subdivided lots, when the general public will not use this private property. Mr Roberts notes that this generates a higher risk rating when you cannot generate a High-Risk Rating using TRAQ when the target is unlikely impacted by the tree or tree part.

[116] Overall, Mr Roberts has called into question the reliability and accuracy of Mr Waymouth's risk analysis for users of Ferntree Drive and for the future owners or occupiers of 3 Ferntree Drive. Mr Roberts believes that to achieve a Highrisk rating Mr Waymouth has over-stated the occupancy rating and included targets that are not in the target zone. Mr Roberts states that when the same data is correctly applied to the TRAQ methodology, the risk rating for T44 is Low.

[117] While the assessment of the current and future health and safety risk posed by the tree is not consistent, both arborists are in agreement that some minor end-weight/reduction pruning on the three limbs identified and the installation of a cable bracing system could maintain the risk associated by those limbs at Low. This consensus on pruning maintaining the risk posed by the tree as low, suggests that the principal issue raised by the application can be mitigated without the removal of the tree.

[118] Mr Steve Rowlands, Council's Urban Forest Officer has also assessed the tree's health and safety risk using a different risk assessment method. He has assessed the risk of the tree to be a 'slight risk' (number 3), whereby the threat category is divided into 7, with 1 being 'insignificant threat' to 7 being 'extreme threat'. He notes the following:

The score of 300 points suggests that annual inspection or after storms of Force 10 or greater. Any recommended pruning to take place within 2 years. In order to reduce the risk level further.

[119] In relation to this risk, he states that potential conflicts and perceived threats can be managed by arboricultural input and good building design with adherence to British Standard 5837:2012 or similar. Mr Rowlands suggests that the health and safety risk of the tree can be managed on a long term basis and in the 'outline of work required' table used by the Parks and Recreation Department, he has ticked the control measure as localised pruning, specifically reducing weight loading on vulnerable limb (including shortening dead branches to retain habitat). He notes that Mr Waymouth's risk assessment has been scored based on residential development having taken place.

[120] Mr Waymouth in his conclusion of his report provides two options to remedy the potential health and safety issues arising from the close proximity of the tree to the proposed houses on 3 Ferntree Drive. These are as follows:

- Option 1. Prune the Silver Fir (T444) using reduction cuts on the 3 'shaded sail areas' as shown in the tree risk assessment on page 7, in order to lessen end-weight. Install steel cabling & bracing systems or similar with a working load limit (WLL) of 4 tonnes at the owner's/risk manager's discretion.
- Option 2. Remove the Silver Fir (T444) to ground level & replant with rhododendrons, camellias, azaleas, viburnums to compliment the existing planting near the frontage of 3 Ferntree Drive.

[121] Overall it is considered that the tree does pose some health and safety risk to the community, especially when residential activity is established in proximity to the tree. This risk is largely in relation to the 3 limbs on the west side of the tree and overhanging the property at 3 Ferntree Drive. The level of risk posed is disputed, however, the evidence available suggests maintaining the level of risk at an acceptable standard of 'low' is feasible through the pruning of the limbs of the tree. Mr Roberts notes that 'low' is the lowest risk rating that can be generated using TRAQ where the tree retained (if the tree is removed, there is no risk posed by the tree, because the tree is no longer there). Mr Roberts and Mr Rowlands on behalf of Council both note that this Low risk rating can be maintained indefinitely if the tree is managed correctly. All experts therefore agree that the removal of the tree is not necessitated by the health and safety risk posed by the tree limbs as an alternative to removal is feasible. This option of pruning the problematic limbs has been assessed above by Mr McKinlay as having an acceptable effect on the amenity contribution of the tree.

Effects on Buildings

[122] While the health and safety risk of the tree for future occupants of 3 Ferntree Drive has been assessed above as able to be maintained as low, submitters in support of the application to remove the tree have raised the consideration of housing. They note the shading effects of the tree onto this property; that prioritising housing is more important in a housing crisis, especially in well-established residential areas and that Dunedin needs modern housing, and that this consideration outweighs the amenity provided by tree.

[123] In relation to these considerations it should be noted that these issues were raised and discussed at the time of subdividing the lots. It was determined that the lots were suitable for residential development notwithstanding the presence of the tree. While the tree does provide a level of hindrance to the development on the adjoining subdivided lots, the tree's positive effects need to be weighed against this consideration. The tree has been assessed as having a positive contribution to the neighbourhood and for those currently living in proximity to the tree. The development of 3 Ferntree Drive is yet to occur and while the tree may shade these properties during parts of the day, the tree will also likely have a positive contribution to the new property owners' amenity. Development on these lots is not prevented and can occur (although resource consent may be required where the building consent is not given effect to prior to the end of this year) and this residential development can co-exist with the tree. The tree's adverse effects can be mitigated through pruning and the tree can be managed on an ongoing basis.

Effects on Infrastructure (Assessment Matters 8.13.10 and 7.8.2.1(c)(iv))

[124] The application states:

The tree currently sits very close to a 100mm water-main that supplies a large number of Dunedin homes...This is shown on the attached 'subdivision

construction plans' prepared by Patterson Pitts Surveyors. This plan also shows other services that have been installed extensively around the base of the tree, These services were installed some years ago before the tree became listed when it was common practice to cut tree roots during trenching. As outlined in the arborist's report, cutting of these roots over successive years of ground work calls into question the stability of the tree.

- [125] The plan drawn by Patterson Pitts Surveyors, dated 15/05/2017 and attached to the Application (page 16 of Peter Waymouth's report) shows a 100mm diameter existing water main running very close to the trunk of the tree. This plan also shows the mapped tree protection zone required under the 2GP and the dripline of the tree. A 150mm diameter DCC foulsewer pipe is also shown to through the tree protection zone.
- [126] Council's 3 Water's Department have indicated that they are not aware of any issues or damage to service pipes in this area and that the 100mm diameter asbestos cement (AC) watermain was installed in 1986. They further stated that the watermain services approximately 17 properties upgradient of the tree location. This watermain would be considered for renewal in 2046 (anticipated lifespan of 60 years).
- [127] It has not been established by the applicant that the existing water main running close to the base of the tree, has an adverse effect on the tree. The water main has been in proximity to the tree for more than 30 years. The 3 Waters Department states that there are numerous trees along Ferntree Drive that have the potential to adversely impact those services.
- [128] The applicant also draws attention to the more recent excavations within the tree protection zone, for which resource consent was granted (LUC-2019-61). The applicant calls into question the stability of the tree after cutting of the tree roots over successive years of ground work. However, the applicant's arborist, Mr Waymouth provides the following comment on the recent excavations:

During 2 recent service trench excavations on Ferntree Drive (03.07.19) within the tree protection zone (TPZ radius =16.50m), only fine feeding roots seen were near the surface at ≤12m from the Silver Fir (T444), in the trench closest to the tree. No other roots were seen in the 10m² excavation zone, which was consented as LUC-2019-61- 5 Ferntree Drive. Therefore, it can be fairly safely assumed that the effect of this specific activity will have no longterm impact on tree health.

- [129] Therefore, the applicant's suggestion does not appear to be supported by the arborist's evidence and the health of the tree has not been compromised after recent work in its root zone.
- [130] The footpath uplift has also been raised as an issue by the applicant. There are no known complaints to Council regarding the state of damage to the footpath in Ferntree Drive. A Ferntree Drive resident submitter notes that the footpath has not changed/uplifted significantly from the tree's roots over the past 14 years of living in the area and using the footpath under the tree. They note that they have never found the footpath problematic when walking/cycling past and that any footpath damage does not justify removal of a tree as is easily fixed or mitigated. They also note that as suggested by the applicant, the fir needles do not cause a hazard on the footpath and the neighbour did not slip on fir needles. They also note the positive effect of the tree on the footpath stating that during ice and frost, the Ferntree footpath is slipperiest where there are no trees present as sections under trees are rarely affected by frost.

- [131] Taking these opinions into account, there does not appear to be a consensus on the level of adverse effects of the tree on the footpath but there is no suggestion that the effect of the tree's roots is causing 'significant' damage to the footpath or that it is a major hazard. As noted by the submitter, the footpath can be fixed where Council is alerted to damage, especially where this poses a health and safety risk to users.
- [132] Overall, it is not considered that the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure as there are currently no known issues with tree roots adversely affecting underground services in Ferntree Drive and there are no significant concerns with the state of the footpath. In terms of the existing infrastructure affecting the tree, there is no strong evidence that this is affecting the tree detrimentally, such that the stability or health of the tree should be called into question. Future applications for work within the dripline and or protection zone of the tree will be assessed at the time and arboricultural advice to minimise the adverse effects on the tree can be sought and followed.

Positive Effects

- [133] The proposed removal of the significant tree would potentially result in some positive outcomes for the amenity and health and safety of the adjoining site at 3 Ferntree Drive.
- [134] Both arborists have agreed that pruning the tree will maintain the risk of branch failure as low, but the health and safety risk for people living in proximity of the tree would not be entirely eliminated without the tree's removal. The removal of the tree would likely have positive effects on sunlight access of Lots 1 and 2 of SUB-2016-103. These lots, and particularly Lot 1, are located very close to the tree and residential activity established on these lots will be in the shade of the large tree for parts of the day. The tree will not completely block access to sun but as the tree is located to the north of Lots 1 and 2 at 3 Ferntree Drive, therefore the tree's shading impact is potentially worse.
- [135] It should also be noted that the removal of the tree would not entirely eliminate existing shading effects onto the site at 3 Ferntree Drive. This is because a group of tall larch trees are located on the opposite side of Ferntree Reserve in proximity to the site, these trees are also protected within the District Plans and on reserve land.

Cumulative Effects (Assessment Matter 8.13.13)

- [136] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

"... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".

- [137] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [138] The proposed removal of the tree is unlikely to have significant cumulative adverse effects. The removal of the tree would cumulatively contribute to the loss of urban vegetation across the city. However, in the in the context of the immediate environment, the loss of one tree (albeit a very large and aesthetically and historically important tree) is not considered to combine with the loss of other vegetation in the area and result in cumulative adverse effects. The retention of vegetation in this

residential community is probably higher, virtue of Ferntree Reserve and the scheduling of many significant trees in the area. The effect of the loss of the tree on the 'green' amenity of the area is not considered to have cumulative adverse effects that are more than minor.

Effects Assessment Conclusion

- [139] After considering the likely effects of this proposal above, overall, I consider the adverse effects of the proposal to remove the tree to be more than minor. The tree's condition and amenity contribution appear to be maintained since its 2001 STEM assessment and justification for inclusion in the District Plan Schedule. Today's assessment suggests that ongoing protection is warranted and that the state of the tree is not in decline and its amenity contribution is very much still experienced and significant. The existing health and safety risk posed by the tree can be mitigated (without removing the tree) to a point where any risk is no more than low, particularly where the risk is in relation to the future occupation of 3 Ferntree Drive. The effects of pruning the tree to reduce the health and safety risk will not negate the amenity contribution the tree provides for the local community. As such, I conclude that the tree's removal is not necessary or warranted and adverse effects of the tree can be appropriately mitigated by pruning.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [140] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
- [141] In this case, other than replacement planting suggested by Mr Waymouth, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

- [142] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Dunedin City District Plan and the proposed 2GP were taken into account in assessing the application.

Dunedin City District Plan

- [143] The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

- [144] Trees Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 15.2.1 Maintain and enhance the amenity and environmental quality of the City by encouraging the conservation and planting of trees.	The Introduction of Section 15 of the District Plan states that trees contribute positively towards amenity and the quality of the environment throughout the city.
Policy 15.3.1 Ensure that landowners and developers are aware of the environmental benefits of trees and encourage them to conserve	The European Silver Fire is a large tree that is beneficial to local biodiversity and amenity of the area. Submitters from the local area surrounding the tree have indicated that the tree has a substantial visual impact within their neighbourhood, provides a habitat for birds and other wildlife and from a street environment perspective provides a presence and identity in

trees and undertake new plantings whenever possible.	terms of their neighbourhood, which is connected to the tree's existing and historical wider setting. The value of the tree to the wider community and positive impact of the tree has therefore been assessed as high. The proposed replacement planting in place of the tree has been assessed as insufficient in terms of the loss of amenity and habitat provided by the tree. The applicant's arborist has provided an option of pruning to reduce risk associated with the tree (and thus the negative impact of the tree can be reduced without removing the tree) but, despite this, the applicant has applied to have the tree removed. Removing the tree will adversely affect the quality of the environment and amenity in the area and fails to recognise the alternative methods of managing the potential for negative effects of the scheduled tree. Therefore, the proposal is considered to be inconsistent with this Objective and Policy.
Objective 15.2.2 Protect Dunedin's most significant trees	The European Silver Fir appears to have a greater impact on amenity and quality of the environment than other trees within the same environment in terms of the landscape, botanical, cultural and historic values which make it particularly important to the community. These values have been identified by submitters from the local community and by Council's landscape architect. The original identification of the tree's contribution and significance to the area has been maintained and its subsequent protection is therefore warranted on an ongoing basis. The potential for negative effects of the tree can be managed and the expense of such mitigation is not considered to reduce the amenity contribution of the tree. The tree is therefore considered to have a 'significant' status in terms of its contribution towards amenity and environmental quality and its removal in light of the possibility of managing the tree's adverse effects is contrary to this Objective and Policy.
Policy 15.3.2 Identify and protect trees that make a significant contribution towards amenity and environmental quality.	

Sustainability Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	The European Silver Fir is healthy and provides a sense of scale and setting to the surrounding streetscape. The tree is a living organism that contributes positively to the amenity of Dunedin. It was likely planted to line the entranceway to a historic homestead (Ferntree Lodge) and this history contributes to its identity within the local and wider community of Dunedin. The tree provides a landmark feature to the surrounding community and is visible from other parts of Dunedin. Removal of the tree would adversely affect the broad scale amenity of the area and the proposed replacement planting will not contribute to amenity on the same scale or provide the same importance and significance to the local community. Removing the tree would therefore be inconsistent with these objectives and policies as amenity values of the area would be lost.
Policy 4.3.1 Maintain and enhance amenity values.	
Objective 4.2.3 Sustainably manage infrastructure.	The tree has caused some footpath uplift and is located close to Council service infrastructure. Any adverse effects on this infrastructure can be managed on an ongoing basis, to ensure that the adverse effects are limited and health and safety risk is low. Overall, the proposal is considered to be consistent with this objective and policy but the retention of the tree is also considered consistent with this objective and policy.
Policy 4.3.5 Require the provision of infrastructure services at an appropriate standard.	

Residential Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 8.2.1 Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied and mitigated.	The tree contributes to the residential character of the area and according to Council's arborist, is generally in good health. Removing the tree will adversely affect the character of the area as many residents have expressed the positive contribution the tree has on their neighbourhood.
Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	Removing the tree will mean improved access to sunlight for Lot 1 (as possibly Lot 2) of SUB-2016-103 but residential activity has not been established on this adjoining site and a dwelling can be established where reverse sensitivity effects are mitigated. The effects of the tree are established and longstanding and form part of the character of the residential area as a 'green' cul-de-sac of Dunedin with historic significance. The removal of the tree will have adverse amenity effects overall, and therefore the proposal is considered to be inconsistent with the objectives and policies of the residential zone.

Proposed 2GP

- [145] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The following 2GP objectives and policies were considered to be relevant to this application:

Scheduled Trees Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 7.2.1 The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained	The tree is a healthy specimen and may have been planted by Early Settlers to line the entranceway to Ferntree Lodge. As such the tree is part of the history of the neighbourhood and significantly contributes to the visual landscape and amenity of the area, as noted by many submitter residents.
Policy 7.2.1.1 Enable the removal of a schedule tree where they are certified as being dead or in terminal decline by a suitably qualified arborist or where subject to an order for removal in terms of section 333 of the Property Law Act 2007	The tree has been assessed as having some level of health and safety risk to the public and future property at 3 Ferntree Drive (the level of risk has not been consistently assessed by the arborists). Removing the tree will eliminate all risk but pruning the trees would maintain the risk at low. The tree is not currently considered to have an immediate or significant risk, nor is it in terminal decline.
Policy 7.2.1.2 Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless: there is a significant risk to personal/public safety or a	As noted in the evidence from Council's arborist, Mr Roberts, there is no current risk to buildings/property as no building has been established within proximity to the tree. It is unknown whether future risk to property posed by the tree will be 'significant', but this is unlikely given that both arborists agree risk to people and property can be maintained as low where pruning is undertaken. The tree is considered to have less than minor adverse effects on the footpath beneath the tree, however this effect can be monitored and managed on an ongoing basis and the footpath can be fixed. In terms of public service infrastructure, the tree has no known adverse effects on this infrastructure and there is no suggestion or evidence of 'significant adverse effects on public

risk to personal safety that is required to be managed under health and safety legislation; - the tree poses a substantial risk to a scheduled heritage building or structure; - there is a moderate to significant risk to buildings; - the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities; or - removal of the tree will result in significant positive effects in respect of the efficient use of land.	infrastructure' necessitating the removal of tree. The tree will shade future dwellings on Lots 1 and 2 of SUB-2016-103 but it is not clear whether sunlight will be significantly compromised (as this will depend on the location and design of the building and the pruning of the tree). The removal of the tree will have some positive effect in terms of the use of Lots 1 and 2 of SUB-2016-103, however, this will not be significant positive effects in terms of the efficient use of this land, as the land can presently be used in an 'efficient' manner and while the quality of the use may change with the tree's removal, the actual efficiency of use will be no different. Overall, the proposal to remove the tree is considered to be contrary to the relevant objectives and policies of the Trees Section.
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Residential Zones Section

	Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 15.2.3	Activities in residential zones maintain a good level of amenity on surrounding properties and public spaces.	As suggested by Council's landscape architect and resident submitters, removal of the significant tree will adversely affect the amenity of surrounding properties. The tree is approximately 90 years old and is of historic value to the area. Replanting the area will mitigate the loss of vegetation to a degree but any vegetation is unlikely to achieve the same significance for the local community or contribute to habitat for local birdlife and insects to the same degree. The removal of the tree will maintain the amenity at Ferntree Reserve although its removal will erode the connection between Ferntree Drive and Ferntree Reserve somewhat. Removing the tree may increase the level of amenity on the adjoining site at 3 Ferntree Drive, as once residential dwellings are established shading and nuisance effects of the tree may occur. Overall, I consider that the proposal is inconsistent with this objective as the existing amenity the tree provides for surrounding sites will be compromised by the tree's removal.

Strategic Directions Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 2.4.1: Form and structure of the environment:	The European Silver Fir has been assessed as having a significant contribution to the visual landscape and history of the Ferntree Drive

The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include: trees that make a significant contribution to the visual landscape and history of neighbourhoods.	neighbourhood. Removing the tree would therefore be inconsistent with this objective as this is an element of the environment which contributes to residents' and visitors' aesthetic appreciation for and enjoyment of the area and this would not be protected.
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Overall Objectives and Policies Assessment

- [147] The key objectives and policies of each District Plan are within the respective 'Trees' sections. The proposal has been assessed as generally inconsistent with all the relevant objectives and policies of each plan and contrary to the key objective and policies of each 'Trees' section.
- [148] The activity status of the proposal in the Proposed Plan is non-complying. The 2GP rules are not operative in this instance because there has been an appeal on the activity status of the removal of significant trees (as well as the key policy providing the framework for this rule). Given that the rules are not yet fully operative, the objectives and policies relevant to the tree removal in the Proposed Plan are given reduced weight in regards to the assessment of the activity against the Plan.
- [149] The Proposed Plan Objectives and Policies are more prescriptive and clearly define the circumstances where the effects from the removal of a scheduled tree are considered acceptable. These circumstances have not been met. With respect to the Operative District Plan, the objectives and policies are less prescriptive but their meaning is helpfully provided in the 'explanation' of each objective and policy. Under the policy framework of the Operative District Plan, where trees make a significant contribution towards amenity and environmental quality, they are considered to be significant and their protection is warranted. Where this contribution is assessed as continuing to be significant, their ongoing protection is warranted. Further to this, the ODP policy framework promotes the idea of prioritising the mitigation of trees' perceived adverse nuisance effects over the removal of significant trees. This notion is related to their higher 'status' within a community and the recognition of the environmental benefits of such trees over others.
- [150] The policy framework of both District Plans supports the retention of the tree.

Assessment of Regional Policy Statements (Section 104(1)(b)(v))

- [151] [Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. The decisions for the Proposed RPS were released in October 2016. The operative RPS remains in force until the review is completed. Local authorities must have regard to both the operative RPS and the proposed RPS when preparing and changing regional or district plans. Given its regional focus, the regional policy statement does not have a great bearing and has little relevance to the current application.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [152] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104D

- [153] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [154] However, only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104 of the Act. In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of both the Dunedin City District Plan and the proposed 2GP. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, the proposal is assessed as being contrary to the key objectives and policies of both the operative and proposed plans. In addition, the adverse effects of the proposal have been assessed as more than minor. The proposal has therefore failed both limbs of the 'gateway test'.
- [155] It is appropriate for the Committee to undertake a full assessment of the application in accordance with Section 104 of the Act.

Section 104

- [156] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed removal of the tree will be significant. The existing adverse effects of the tree can be adequately avoided remedied or mitigated through pruning.
- [157] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [158] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be contrary to the key objectives and policies relating to both the Dunedin City District Plan and the Proposed 2GP.
- [159] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. The regional policy statement does not have a great bearing on the current application. I do not consider it relevant for my assessment of the proposal.

Other Matters

- [160] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [161] Case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.
- [162] I do consider that the proposed activity represents a challenge to the integrity of the Proposed District Plan but not the Dunedin City District Plan. The reasons for this is that the tree's removal is a discretionary activity in the Dunedin City District Plan, which does suggest that in certain circumstances, removal of a scheduled tree may be appropriate. As the ODP is not prescriptive in this regard, the tree's removal is not considered to undermine its integrity. However, the 2GP is very prescriptive around when the removal of a scheduled tree is appropriate and provides a non-complying activity status for removal. The present application has been assessed as not meeting the criteria for when removal is appropriate under the 2GP and thus its removal, in contravention of this clear criteria, would undermine the integrity of this plan.
- [163] The Committee needs to be aware of the potential for an undesirable precedent to be set in this regard. However, the relevant provisions of the 2GP are under appeal and therefore should not be afforded the same weight as the Operative District Plan provisions. Therefore, the precedent effect with respect to the 2GP provisions is limited at this time and will remain so until appeals are resolved.

CONCLUSION

- [164] Having regard to the above assessment, I recommend that the application as submitted to remove the tree be declined. The removal of the significant tree is not considered justified because a) the tree is healthy and provides a strong community benefit in terms of amenity and its historical connection of the area, and b) the health and safety threats associated with the tree can be addressed by pruning works, which will not lessen the amenity benefit provided by the tree or adversely affect the health of the tree. I recommend that pruning be undertaken as recommended by the applicant's arborist, Mr Peter Waymouth.
- [165] If the Committee are of the view that consent may be granted for the alternative of pruning the tree within the scope of the present application, I recommend that the conditions set out below be included in any consent granted.

RECOMMENDATION

- [166] That the application to remove the tree be declined.
- [167] Where consent to prune the tree is granted, the following conditions should be included:
- *The activity shall be carried out generally in accordance with the information in the application dated 24 July 2019, except where modified by the following conditions of consent.*
 - *Landowner approval must be obtained prior to any works taking place.*
 - *All proposed work must be carried out by an experienced and qualified arborist in accordance with recognised arboricultural practices and pruning standards.*
 - *The consent holder shall advise the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz of the date that the tree will be pruned. The written*

advice shall confirm the identification of the trees and the measures to be taken to protect the trees that are to be retained. The written advice shall be provided to the Resource Consent Monitoring team at least five (5) working days prior to the works on the tree.

- *Pruning shall consist of Crown Reduction works only. Collectively all pruning activities shall not remove more than 20% of the live foliage of the tree.*
- *Crown Cleaning is not required and shall not be undertaken*
- *Crown Thinning is not required and shall not be undertaken*
- *Crown Raising is not required and shall not be undertaken*
- *Crown Reduction may be undertaken if required and shall involve the use of branch-end reduction pruning to reduce the overall length and/or end-weight of selected branches to create the required crown shape. Branches being reduced in length shall be pruned back to live lateral branches (side branches) that are at least one third the diameter of the parent branch. The overall shape and form of the branch must be taken into account during pruning.*
- *A system of cable-brace supports may be installed to support and restrict excessive movement of selected stems. The cable-brace support system shall be designed and manufactured specifically for tree support and shall be positioned and installed in accordance with the manufacturers instructions*
- *The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of trees 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

No work is undertaken on Sundays or Public Holidays nor between 8.00pm to 7.30am Weekdays or Saturdays.

REASONS FOR RECOMMENDATION

- [168] The proposal is considered to be contrary to the key relevant objectives and policies of both the Dunedin City District Plan and the Proposed 2GP.
- [169] The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago.
- [170] As the proposal is considered likely to give rise to adverse effects that are more than minor, and will be contrary to the objectives and policies of the District Plan, the proposal to remove the tree is considered to fail both 'limbs' of the Section 104D 'gateway test'. Consideration cannot therefore be given to the granting of consent to the proposal.
- [171] The proposal to remove the tree is not considered to be a true exception.
- [172] Overall, the proposed removal of significant tree T444 has been assessed as likely to give rise to adverse effects on those elements of the Residential Zone that the Dunedin City District Plan and Proposed District Plan seek to protect, and these effects cannot be mitigated by the replacement planting proposed.

Report prepared by:



Madeline Seeley
Planner

14 / 10 / 19

Date

Report checked by:



Campbell Thomson
Senior Planner

14 / 10 / 19

Date