

28 April 2021

A S Munro (for Dunottar Trust)
61 Wallace Street
Maori Hill
Dunedin 9010

Via email: munrosteve61@gmail.com

Dear Steve

RESOURCE CONSENT APPLICATION:

**LUC-2020-524
61 WALLACE STREET
DUNEDIN**

The above application for land use consent to remove a scheduled tree at 61 Wallace Street, Dunedin was processed on a publicly notified basis in accordance with section 95 of the Resource Management Act 1991. I was appointed by the Dunedin City Council (DCC) as an Independent Commissioner to hear and make a decision on the application. I undertook a site visit on Friday 9 April 2021 and then heard and considered the application at a hearing on Thursday 15 April 2021.

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

I have resolved to **grant** consent to the application to remove the scheduled tree. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant was represented by:
Steve Munro.

Council staff attending were:

Campbell Thomson (Advisor to Committee), Robert Buxton (Consultant Processing Planner), Mark Roberts (Consultant Arborist), Luke McKinlay (Landscape Architect) and Rebecca Murray (Governance Support Officer).

Submitters in attendance were:

Jim Moffat (representing Protect Private Ownership of Property Society)

Procedural Issues

No procedural issues were raised.

Principal Issues of Contention

The principal issues of contention are as follows:

- The current health and amenity value of the tree T1176
- The scope for and likely effectiveness of remedial works

Summary of Evidence

Introduction from Processing Planner

The Consultant Planner, Mr Buxton, gave a brief summary of the relevant planning issues and conclusions of his report on the application. He confirmed the notification of the application and submissions received. He noted that the tree had been assessed by the Consultant Arborist, Mr Roberts, and the scope for remedial work had been investigated but considered unlikely to be successful. He noted it had been recommended by Mr Roberts that the tree be removed within 6 to 12 months.

Following the presentation of the technical advice below, Mr Buxton commented on the location of the tree at the front of the site, and noted the information available indicated there had been a general decline in the health of the tree over at least the past five years. He recommended that consent be granted, subject to conditions.

Evidence of Technical Advisors

The Landscape Architect, Mr McKinlay spoke to his analysis of the amenity value of the tree. He commented on the tree and how he determined his revised score for the amenity component of the STEM assessment.

Mr Roberts spoke to his assessment of the condition of the tree. He noted that a prior assessment of the tree in 2018 was in regard to pruning for clearance from a utility line. He advised that with his current assessment he had examined whether the tree was in decline and why, and reviewed the condition components of the STEM assessment. Mr Roberts commented on remedial action that may be able to be undertaken, but advised that it would necessitate severe pruning to an extent not consistent with national standards for maintaining a tree. He advised that the tree is of a species that does not respond well to exposure, as evidenced by its decline since a neighbouring tree was removed. He considered that it would be marginal if the tree would survive remedial pruning, and if it did, it would no longer be in a state worthy of retention.

The Applicant's Case

Mr Munro spoke to his application and advised that he had resided at the property since 1994. He noted that it was a large property with a lot of large trees, and three trees had been blown over by the wind since he owned the property. He advised that the Copper Beech tree had been crowded out by other trees but was now more exposed. He observed that it does not look good in comparison to another Copper Beech in the same street, and during the last summer it was not a pretty sight. He advised he had spoken to arborists about the removal of the tree and confirmed there were no difficulties with undertaking the work. Mr Munro requested that removal of the tree be allowed to be undertaken sooner rather than latter, given Mr Roberts advice about the timing of this work was given last year.

Evidence of Submitters

Mr Moffat spoke to his tabled evidence in support of the application. He commented on the advice of the Arborist regarding the condition of the tree and emphasised the fact no submitters opposed the removal of the tree.

Processing Planner's Review of Recommendation

Mr Buxton reaffirmed his recommendation that consent be granted

Applicants Right of Reply

Mr Munro reiterated the positive aspects of the application and requested that approval be given as soon as possible to remove the tree given the condition of the tree.

Statutory and Other Provisions

In accordance with section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions that I considered. I had regard to the relevant provisions of the following chapters of the Dunedin City District Plan: Section 4 Sustainability and Section 15 Trees; and to Section 2 Strategic Directions and Section 7 Scheduled Trees, of the Proposed Second Generation District Plan. I was satisfied that there were no additional matters to be considered in relation to the Regional Policy Statement for Otago, or Part 2 of the Act.

Main Findings on Principal Issues of Contention

I considered the evidence heard, the relevant statutory and plan provisions, and the principle issues in contention. My main findings on the principal issues have been incorporated within the reasons set out below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. I reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991.

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying activity** being the removal of scheduled tree T1176 on the site at 61 Wallace Street, Dunedin legally described as Part Section 7 Block I SO 14194 Upper Kaikorai SD (Record of Title OT 257/298), subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision

1. I am satisfied on the basis of the evidence presented, that tree T1176 is in a state of terminal decline, and that remedial work to sustain the health of the tree is unlikely to be successful. It was made clear to me that substantial intervention work would be needed to try and arrest the decline in the condition of the tree, with the outcome of this unable to be assured.
2. I consider that the decline of the tree has reached a point where the removal of the tree is warranted. The evidence presented to me in relation to the present condition and amenity value of the tree showed that the tree now falls well short of a STEM score of 147 points. This has been the accepted benchmark used by the Council for the purpose of determining when trees warrant protection by way of inclusion in the District Plan. Further, in addition to safety risks arising from the continued decline of the tree, I am mindful of the advice of Mr Roberts that the costs of removing the tree are likely to escalate once the tree is dead.
3. I am satisfied that the loss of the tree will not represent a significant change to the character of the environment in the vicinity of the subject property, due to the proximity of other trees in the town belt across the road, the Rata tree on site, and trees on other nearby properties. This includes the Copper Beech tree located at 55 Wallace Street (T1175).
4. As a consequence of the above, I consider that the adverse environmental effects of the removal of T1176 will be no more than minor and can be adequately mitigated through conditions of consent.

5. I concur with the assessment of Mr Buxton that the proposal is not contrary to the relevant objectives and policies of the District Plans. While I accept there is a degree of inconsistency with these provisions, as they focus on protecting not removing trees, I am satisfied the proposal is not repugnant to the objective and policies. These provisions give effect to the relevant objectives and policies in the Regional Policy Statement for Otago.
6. I consider that the proposal does satisfy both gateway tests contained in section 104D of the Resource Management Act 1991. As such, I am therefore able to consider the granting of consent to the proposal.
7. Given the site specific nature of all applications concerning trees, and the evidence of the declining state of T1176, there is no reason for me to believe that the granting consent to the proposal will threaten the integrity of the District Plan or establish an undesirable precedent for future applications.
8. I have concluded that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Right of Appeal

In accordance with section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received.

The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Commencement of Consent

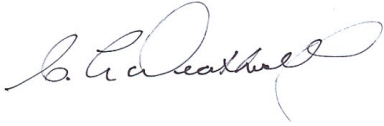
As stated in section 116 of the Resource Management Act 1991, this consent will only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a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

Monitoring

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

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Colin Weatherall', with a stylized, cursive script.

Colin Weatherall
Commissioner

Consent Type: Land Use Consent

Consent Number: LUC-2020-524

Purpose: The removal of scheduled tree T1176.

Location of Activity: 61 Wallace Street, Dunedin.

Legal Description: Part Section 7 Block I SO 14194 Upper Kaikorai SD (Record of Title OT 257/298).

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

Conditions

- The proposed activity must be undertaken in general accordance with the information provided with the resource consent application received by the Council on 17th October 2020, except where modified by the following conditions.*
- The removal of the tree must be undertaken by a suitably qualified person and in accordance with arboricultural best practice.*

Conditions to be met prior to site works commencing

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

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

- All waste generated by the removal works must not cause a nuisance and must be suitably disposed of within 7 days of the completion of the removal works.*
- The person exercising this consent must take all reasonable measures to ensure the use of machinery for the removal of T1176 is limited to the times set out below and must comply with the following noise limits (dBA)*

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

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

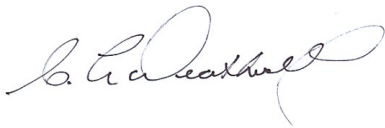
Advice Notes

1. The consent holder should contact the electricity supplier with regard to the service power line that crosses 61 and 63 Wallace Street with regard to its safety protocol with respect to removal of trees.

General

1. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
2. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
3. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
4. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

Issued at Dunedin on 28 April 2021



Colin Weatherall
Commissioner