

TO: Hearings Committee

FROM: Finn Campbell, Graduate Planner

DATE: 15 August 2024

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2024-171
27 King Street, Mosgiel

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 15 August 2024. 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.
- [2] In preparing this report I have relied on the reports provided by Mr Peter Waymouth for the applicant (refer to Appendix 1); Mr Luke McKinlay, Dunedin City Council Landscape Architect; and Mr Mark Roberts of Roberts Consulting, consultant arborist to the Dunedin City Council (refer to Appendix 3).
- [3] I conducted a site visit on 5 August 2024.

SUMMARY OF RECOMMENDATION

- [4] I consider the application to be contrary to the key policy of the 2GP relevant to this application. However, this application has been applied for at a time that the Dunedin City District Plan 2006 is still an Operative Plan. While inconsistent with the equivalent policy provisions of that plan, the proposal is not contrary to them. I therefore consider that it is open to the panel to consider granting consent for the proposal.
- [5] I consider that the proposal should be refused consent. I consider that there will be localised adverse effects on amenity values that are more than minor, and that the application contrary to Policy 7.2.1.2 and inconsistent with the objective 7.2.1 of the Proposed Second Generation Dunedin City District Plan (2GP).

DESCRIPTION OF PROPOSAL

- [6] Resource consent is sought to remove a scheduled tree. The tree is a Pin Oak (*Quercus palustris*) The tree is scheduled in the 2GP Appendix A1.3 Schedule of Trees ('the schedule') as T666.
- [7] A copy of the application is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [8] The site at 27 King Street, Mosgiel, is legally described as Lot 2 DP 495976 Held in Record of Title 728796.
- [9] 27 King Street is a square shaped parcel located on the northern side of the junction between King Street and Bruce Street. The site has approximately 27m of frontage to King Street and 25m to Bruce Street. The subject Pin Oak tree is situated in the front garden of the property and readily visible from the street. The applicants arborist report includes photos of the tree and its canopy spread, and general information about the tree species, in relation to his assessment of the risks of the tree failing and mitigation options.
- [10] To the south-east of the scheduled tree the site is occupied by a stand-alone dwelling that occupies the middle the site and is built up to roadside boundary to Bruce Street. The scheduled tree sits in close proximity) to the north western boundary corner and has limbs hanging over the powerlines located in the King Street Road reserve.
- [11] 27 King Street is a flat site with no slope or undulations.
- [12] The subject pin oak tree is located in the front garden of the property, in the location circled on Figure 1. below.



Figure 1. Aerial photograph of 27 King Street. Location of the pin oak (T666) is circled in red.



Figure 2. View of T666 from south facing north on King Street.

- [13] Within a radius of approximately 300m of T666 there are 10 other scheduled trees. T071, a southern rata at 32 Gordon Road; T060, a white pine at 1 Duke Street; T073, a purple beech 46 Gordon Road; T076, a miro at 7 Inglis Street; T151, a copper beech at 28 Argyle Street; T066, a weeping elm at 6 Gordon Road; T077, a lancewood at 74 Church Street; T153, a western yellow pine at 50 Argyle Street; and lastly T522 & T521, which are both yew at 55 Gordon Road.

- [14] There is a count of approximately 43 scheduled trees in an equivalent suburban setting across Mosgiel.

- [15] The neighbourhood could be described as having varied greenery. Many sites feature a number of trees and plantings, whilst others have simpler outdoor space composed of just lawns, but in some cases, there are fully surfaced sites with an absence of grass and greenery. There are many substantial trees in Mosgiel alongside many trees managed by the DCC in the road reserve. Much of the notable suburban trees in the surrounding area are the scheduled trees mentioned in paragraph 13.



HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [16] The site was previously part of a larger 27 King Street which was subdivided into 2 lots around 2015 under SUB-2015-105. This was essentially a 2 lot subdivision retaining the existing dwelling at the current 27 King Street as a street corner site, with 27A King Street comprising the northern portion of the former site.
- [17] Consent was granted under LUC-2015-555, concurrently with SUB-2015-105, to establish a new dwelling in breach of the height plane angle at 27A King Street. This authorised access and fencing works under the canopy spread of T666. The raised concerns by the Parks and Recreation Tree Officer related to protecting the root systems during the establishment of the two lots and conditions were imposed to manage the effects of construction on the health of the tree. No extraordinary concerns were raised at the time by the Tree Officer about the proximity of the tree to either the existing or proposed dwelling.
- [18] There have been a number of resource consent applications relating to the tree. These are as follows:

- LUC-2020-249 – non-notified consent issued to D & P Bain for crown cleaning, crown thinning and crown reduction.

Date of decision was 23 June 2020.

LUC-2015-578 – full notified consent for the removal of T666. Authorisation was sought by the subdivider concurrently with resource consent applications SUB-2015-105 and LUC-2015-555. LUC-2015-578 was declined by the Council. A copy of the decision is attached to this report as Appendix 7 The date of the decision was 27 April 2016.

[19] There have been a number of resource consent applications related to a prior scheduled tree T665 (walnut) which have been included for clarity regarding the works related to scheduled trees at 27 King Street. These are as follows:

- LUC-2010-249 removal of significant tree T665.
- RMA-2001-364782 (GEMS ID RMA20010272) pruning of registered tree in Mosgiel plan.

2001 STEM ASSESSMENTS T1191

[20] T666 received a total STEM score of 156 points in the assessment dated 16 May 2001.

[21] The accepted score to warrant inclusion in the District Plan tree schedule is 145.

[22] A copy of the STEM assessments is included as Appendix 4.

2GP AUDIT OF SCHEDULED TREES 2013/14

[23] During the District Plan review process, most of the significant trees were examined in 2013-2014 by a Council Landscape Architect and a Council Arborist, to see if the trees were still worthy of continued inclusion in the 2GP's 'schedule' of significant trees (Appendix A1.3). However, a new STEM assessment was not undertaken in 2013, and the 'assessment' was more akin to a visual audit and inventory. A photograph of the subject tree is in Council's records from the 2GP audit, and attached as Appendix 5 of this report.

ACTIVITY STATUS

[24] Dunedin currently has two district plans: the operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 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.

[25] 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. It is noted that the Dunedin City Council resolved on 31 July to make the Dunedin Second Generation District Plan 'partially operative'. This means that with the exception of some sites and specific provisions which are still subject to appeal, the 2GP will become the operative District

Plan for Dunedin and formally replace the previous operative District Plan (2006). This change is expected to come into effect on Monday 19 August 2024.

Dunedin City District Plan

- [26] In this case the relevant zoning and rules of the Operative Plan are considered to have been superseded by the Proposed 2GP, wherein the provisions related to this application are beyond challenge. Therefore, no assessment of the proposal under the Operative Plan has been undertaken.

Proposed Second Generation Dunedin City District Plan “Proposed 2GP”

- [27] The Proposed 2GP was notified on 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. 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. There are no appeals of relevance to this site or application.

- [28] The subject site is zoned General Residential 2 and is subject to the following overlay areas.

- Mosgiel Mapped Area
- Wāhi Tupuna Mapped Area: Kokika o Te Matamata (area surrounding Mosgiel)
- Wastewater Constraint Mapped Area
- Hazard 3 (flood) Overlay Zone
- Dunedin Airport Flight Fan (Designation D274).

- [29] The proposal falls under the definition of the following city-wide activity:

Scheduled trees activities

- [30] As a result, only the City-wide Activities rules in the Proposed 2GP need consideration- for this application.

- [31] Rule 7.3.2.3 of the activity status table of the Scheduled Trees Section states that '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.

- [32] 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. Based on the assessment of Mr Mark Roberts, the Council's consultant arborist, the condition of the tree is not 'dead, in terminal decline or with extreme failure.' The assessment provided by Peter Waymouth of Green Trees Ltd does not raise any suggestion to the contrary, although he does raise concerns about branch failure. Therefore, the application cannot be considered as a restricted discretionary activity.

- [33] The application is therefore a **non-complying activity** in accordance with Rule 7.3.2.3.

NATIONAL ENVIRONMENTAL STANDARDS

[34] There are no National Environmental Standards relevant to this application.

NOTIFICATION AND SUBMISSIONS

[35] No written approvals were submitted with the application.

[36] Rule 7.4 of the 2GP states that applications for the removal and any other works that will lead to the death or terminal decline of a scheduled tree will be publicly notified.

[37] The application was publicly notified in the Otago Daily Times on 1 June 2024.

[38] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal.

[39] Submissions closed on 2 July 2024.

[40] 2 submissions were received by the close of the submission period. Both submissions were in support of the application.

[41] 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?
Protect Private Ownership of Trees Society (POTS)	Support	T666 is unsuitable for the site. T666 poses a threat to powerlines. The costs of maintaining T666 are an unreasonable imposition upon the finances of the Bains.	Yes
Elsie Monaghan	Support	T666 causes concern for my safety if a branch were to drop. Root system could cause damage. Have had to install gutter guards at a cost of \$3500.00 due to twigs and leaves falling onto roof.	No

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[42] 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

- [43] 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.
- [44] 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 the 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.
- [45] 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.
- [46] In terms of the activities that may take place within proximity of a scheduled tree, the 2GP excludes new 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' if a number of requirements are met, however as a permitted activity this is not considered to have any relevance to the current application.
- [47] Overall, I consider there are no relevant 'permitted effects' in terms of activities that may be undertaken within proximity of this scheduled tree that could feasibly be disregarded when considering the effects of the proposed removal.

Assessment of Effects

- [48] The assessment of non-complying activities contained in section 7.8.2 of the 2GP provides useful guidance for this application. Assessment matter 7.7.2.2 in relation to the assessment of restricted discretionary activities determines matters of discretion as the 'effects on amenity.' While matters of discretion are not limited in this case, amenity remains a principal consideration.

Tree Condition

- [49] Council arborist Mark Roberts provided the following assessment on T666 [abridged]:

"From an arboricultural perspective, the pin oak (Quercus Palustris) is a near specimen example of the species. I saw no structure issues to suggest that whole or partial tree failure was imminent or likely in the near future." Using two tree risk methodologies, the risk is as low as either system can generate.

There is no need to undertake maintenance pruning or instal cable supports in this tree.

- [50] Mark Roberts asserts that some concerns held by the applicant are in part created by the Greentrees Tree Report. He considers that this report contains irrelevant content, incorrect use of methodologies, use of over-inflated figures, and examples of poor arboricultural practice.
- [51] I note that the consent record for the pruning work subject of LUC-2020-249 indicates Mr Waymouth and Mr Roberts both provided an assessment of T666 at that time, and neither raised any concerns about the possibility of major branch failure.
- [52] Mr Waymouth, in his current GreenTrees Ltd report, assessed T666 as being in good health. There is no indication of rot or fungal decay, but he does not rule out that it may be present. The trunk of the tree returned a good “sounding” as part of a basic resonance test. His inspection of the upper canopy was foiled by foliage, but there was no indication of large broken branches hanging aloft.
- [53] Mr Waymouth describes situations of other pin oak failures within 5km to T666. Two pin oaks were removed due to structure failures; one whole tree failure (girdling root), and one partial failure (horizontal crack). He noted two other pin oaks were removed due to advanced root collar rot. All four examples of pin oak failure were in the Taieri and were of similar age and stature to T666.
- [54] Mr Roberts asserts in his assessment of Mr Waymouth’s GreenTrees Ltd report that these four pin oak cases were not equivalent to T666. He considers that they do not provide insight into the health or the need for the proposed removal or pruning and cabling works for T666.
- [55] Mr Waymouth describes T666 as being 50-70% through its lifespan and advises that pruning and cabling would mitigate some risk of branch failure “to some extent” and his advised outcomes are to:

- a) Prune and cable T666*
- b) Remove T666.*

Part of this advice indicates that there will be some costs involved for the Bains in maintaining T666 in order to mitigate any risk it may pose.

- [56] Mr Roberts asserts that no pruning or cabling works are necessary, and that any mitigation works will not reduce any actual risk as the risk associated with T666 is low.

Amenity

- [57] No submissions were made in opposition to removing T666.
- [58] Not all scheduled trees will have equal amenity value, and the contribution of any particular tree may change over time as a result of various factors. It is therefore worthwhile to re-confirm the STEM evaluation.
- [59] Mr Waymouth provides an assessment of the STEM score of T666 which is totalled at 138. However, Mr Roberts asserts that Mr Waymouth has not in fact provided a STEM assessment, rather he has used his own personal methodologies and that his scored

should not be considered a “STEM value” as they are not consistent with the calculations used to find the STEM value.

- [60] The Council’s Landscape Architect, Mr Luke McKinlay, has reviewed the application and visited the site. He provided the following ~~(abridged)~~ comments in relation to the potential effects of removing this tree in terms of the existing amenity values of the area and STEM assessment:

The original STEM assessment, which was conducted in 2001, resulted in a score of 156, which is above the required 145 threshold for inclusion on the schedule.

Site Context

King Street is a residential street in Mosgiel. The subject site is located on the corner of King and Bruce Streets. The surrounding area is zoned General Residential 2 and contains a mixture of stand-alone dwellings and blocks of single-storey flats. There are grass berms on both sides of the street that contain a variety of street trees, including Prunus Sp., Liquidambar styraciflua, Acer japonicum and Acer capillipes. Street trees on the eastern side of the street have been pruned beneath overhead powerlines. Surrounding front yards include a mix of planted areas, lawns, vehicle driveways and parking areas. Street-front boundaries are defined by either hedges, mixed informal amenity planting and/or fencing.

The subject tree is located behind a hedge on the King Street boundary of this property, to the northwest of the dwelling.

STEM Assessment

There are three broad evaluation categories to a STEM report – condition (health), amenity (community benefit) and notable evaluation features. This memo considers amenity related matters only. There are no notable evaluation features identified for this tree.

The 2001 council STEM assessment of T666 resulted in a total amenity ‘score’ of 75. It is considered that this amenity evaluation remains largely unchanged.

My re-evaluation of the 2001 STEM is as follows:

- Stature: The height of T666 has been measured at 20m (15 points).*
- Visibility: T666 is visible from a distance of at least 1km. Even at this time of year, when this tree is not in leaf, it is visible from Kinmont, which is greater than 1km from the site (refer Appendix 1, figure 4) (9 points).*
- Proximity: While T666 dominates several smaller neighbouring trees, including nearby street trees, it is reasonable to assess that this is not a solitary tree, but part of a small cluster - Group 3+ (21 points).*
- Role: This criterion assesses a tree or trees’ value in a setting or as part of a composition. It is considered that T666 makes an important contribution to the amenity of the surrounding area, both at the streetscape level and as part of the treescape associated with wider Mosgiel. It is noted that recent multiunit development in parts of Mosgiel zoned GR2 has resulted in the removal of several large trees (unscheduled). As such, there has been a decline in the tree canopy cover of this area. In this context, T666 contributes to the remaining larger tree canopy cover within this part of residential Mosgiel. Due to its stature and location near the street front boundary, T666 is a primary focal feature of the immediate surrounding streetscape. It is a prominent natural feature and acts as a counterpoint to the surrounding built environment. (Important: 15 points).*

- *Climate: The value of large trees in the urban environment is well established. Both at a micro climatic scale (the benefits of shade, shelter) and at a wider city-scale (air purification, carbon sequestration, stormwater absorption) trees such as T666 have multiple climatic benefits. Even if only considered at a micro climatic level, the impact of a large deciduous tree such as T666 is important (Important: 15 points).*

Combined STEM amenity subtotal: 75

This reassessment confirms that T666 retains amenity values that support its place on the scheduled tree register.

In general, it is considered that T666 is a prominent natural feature that is visible from both surrounding streetscape locations and from more distant hillside locations that overlook Mosgiel, such as Kinmont. Due to its stature and proximity to the street front boundary, T666 is a primary focal feature of the immediate surrounding area. As noted in the report, prepared by consultant arborist, Mark Roberts, this tree is a “near specimen example of the species” and has good vigour and vitality.

It is considered that the loss of this distinctive and prominent tree would have moderate-high adverse effects on existing amenity values.

I adopt Mr McKinlay’s assessment of T666’s amenity value and consider that the loss of the tree will result in moderate to high adverse effects on the existing amenity values of the locality given its stature, attractive form, and prominent position near the street. Nevertheless, I note that these effects would be localised to King Street; and parts of Bruce Street. King Street is not a main transport route and accordingly, the public amenity benefits are largely experienced by people who live nearby.

Historical Associations

27 King Street was part of the historic site of “Maranatha Home.” The house (demolished in 2016) as originally established c1899 and was originally Dr Allans House, who operated it as a surgery. In 1920 it was purchased by Dr. Patrick Shaw and was his home and surgery until 1948. After World War 2 it continued to operate as a surgery for Dr. J.M. Wilson. In 1952, the house was sold by Miss Margaret Shaw to the Maranatha Fellowship Trust Inc where it operated as a rest home until its closure in c2015. (Retrieved from HAIL-2015-78 & internet archive: maranatha.co.nz/history).

[61] It is difficult to conclusively determine the lifespan of the tree due to the varying quality of the available aerial photography. However, it appears that the tree may have been established as early as 1947.



Figure 3. Image from 1947 archival aerial photography. Tree shown in location of T666 but unconfirmed if same tree.

- [62] The 2001 STEM assessments provide different ages for the tree. Conservatively, the tree has an age of 60 plus years. This means that the tree could today be at least 80 years old. This does not correlate with the age of Maranatha house nor the house at 27 King Street.
- [63] It is regrettable that subdivision and development in proximity to the tree has led to this point where its removal is now being sought. However, there is no immediate evidence that the tree is of any great historic significance other than the inherent local heritage value as a tree of some age in what was likely the garden of an early grand house in Mosgiel. The house no longer exists.
- [64] Based on the above, I do not consider the tree's likely historical associations to be of any particular importance.

Health and Safety and Risk to Property

- [65] The key reasons for seeking removal of the tree are due to the size and stature of the tree. Their primary concern is the tree losing a limb or falling on their home. Their home is 6.0m meters away from the tree and the tree overhangs their living room and the 10-year-old daughter's bedroom, causing her anxiety and to feel unsafe.
- [66] In their application, the Bains stated that they feel unsafe and insignificant living underneath T666. The tree is so big it takes out all the sunlight exposure to their front yard, living area and the children's bedrooms. Depriving them from enjoying their yard and having exposure to vitamin D.

[67] When I visited the site on 5 August there was a minimal debris from the tree visible in the garden and on the roof of the house; but there was more on the neighbouring property. Though it noted that the tree is deciduous and not producing any litter at this time of year.

[68] The two arborists, Mr Weymouth and Mr Roberts, are in apparent disagreement that imminent tree failure is unlikely to occur. Mr Roberts is of the opinion that the tree is in good health and there are no apparent indications that the tree will fail; whilst Mr Weymouth provides some indication that due to prior incidents of pin oak failure in the local area that high intensity storm events could cause tree or limb failure.

[69] House and neighbouring house. The size and stature of tree T666 means that the tree has some branches overhanging the dwellings at 27 King Street and 27A King Street. Whilst there is overhang it is noted that these branches are minor. The risk to property associated with branch or limb failure is identified as being low by Mark Roberts in his arboricultural assessment of T666. He advises that the species, *Quercus palustris*, is not associated with limb failure and the tree is identified to being in: *“good health and exhibited vigour and vitality that was consistent for a tree of this species and age.”* The trees form indicates even loading of branches and distribution of growth. There is a symmetry to the tree’s branches which indicates no uneven loading, nor a history of uneven loading. There are no indications of signs of symptoms or fungal pathogens that indicate potential ill-health of the root system. Mark Roberts report on T666 used the Quantified Tree Risk Assessment (QTRA) to calculate the risk of catastrophic failure posed by the tree. The QTRA for T666 was found to be 1/1,000,000 which is a risk rating of “As Low As Reasonably Practical”. This risk assessment does not calculate risk for extreme weather events *“as there is no way to tell if the event will happen and/or how extreme the event will be. In extreme weather events buildings and other engineered structures may also fail.”*

I accept this assessment provided by Mark Roberts and accordingly consider the risk to people or property to be low.

[70] Powerlines. In the Mark Roberts assessment of T666 he considers the risk to the power network to be “unlikely”. The follow (abridged) excerpt is from said assessment:

“The Electricity (Hazards from Trees) Regulations 2003 provide for the line/network owner to manage vegetation around their overhead lines. When vegetation grows towards the lines and enters the Notice Zone the tree owner is notified. The Notice Zone is considered a safe distance from the lines where the offending branches can still be removed by any competent and capable person. If the tree encroached beyond the Notice Zone and grew into the Growth Limit Zone (GZL) the line/network operator will remove the offending branches to prevent risk to their network.”

I accept this assessment and consider that there be sufficient mechanisms in place to manage any risks to the electricity network and that overall risk to the network is low and it is possible to be managed with pruning where necessary. I would consider the risk to existing infrastructure and network utilities to be minor/low.

[71] Underground infrastructure. Damage to underground infrastructure was raised as a potential risk arising from T666. No evidence was provided to determine if any effects are real, likely, or potentially occurring. Neither arborist raises any concerns on underground infrastructure including pipes and foundations.

[72] On my site visit there were no visual clues to any potential damages to the fence line, the pavers on 27 King Street, or to the foundations to the properties. I consider the risk to

infrastructure to be low and unlikely to occur and therefore don't consider that any potential damage to infrastructure justifies removing the tree at this time.

Having regard to the above, there appears to be little evidence the tree is currently causing problems for buildings, fencing and infrastructure in the vicinity, and both arborist's assessment determined that there is no indication of ill-health of T666. The issue seems to be largely confined to the real or perceived risks of structural failure of the tree.

- [73] Mr Roberts was asked whether the tree presents a significant threat to property or human health. He replied:

"I am unable to comment on how the applicant feels. In terms of safety contrary to the opinion of their arborist the likelihood of this tree actually causing harm to people is Low (considerably lower than the vast majority of everyday activities that we undertake i.e. driving, crossing the road, making dinner, playing sport). The likelihood of this tree causing significant damage to property is also Low."

As well as the following:

"The applicant's arborist appears to have created or at least inflated the actual risk associated with this tree. As above likelihood of this tree actually causing harm to people or significant damage to property is Low."

- [74] Risk to powerlines seems to have been previously managed via pruning, and accordingly no significant adverse effects on power lines has been established. – applicant has provided some information regarding risk to powerlines that is included in their application.
- [75] Section 7.8.2 of the 2GP provides guidance on the assessment of resource consents to remove scheduled trees, and seeks to avoid the removal of scheduled trees unless there is a there is a significant risk to personal/public safety, or a risk to personal safety that is required to be managed under health and safety legislation. I do not believe this level of risk has been substantiated from the information I have considered.
- [76] However the assessment guidance also provides scope for tree removal to be considered where there is a moderate to significant risk to buildings. I do not consider that the risk meets this threshold. This view has been informed by the assessments of the two arborists, Mr Roberts (for the Council), and Mr Weymouth (for the applicant.)
- [77] It is noted that the Electricity (Hazards from Trees) Regulations 2003 may introduce new requirements for managing T666 with respect to maintaining powerline clearances. It is considered that the tree is not in direct conflict with the current regulations, and new regulations would not undermine the amenity qualities of T666 that warrant its scheduled status nor undermine the structural integrity of the tree.

Consideration of Alternatives

- [78] Mr Weymouth has recommended that the tree be maintained by pruning and installing a cabling system to reduce risk of whole stem failure.
- [79] Mr Roberts does not believe that remedial work is necessary to address the issues indicated by the applicant. He considers that the tree is in good health and that any costs

and risks that are perceived to burden the applicant are not reflective of the context of tree T666. This is because the risk posed by the tree is low and that cabling is not required.

- [80] Cabling systems have a lifespan of approximately 8 years and such a system would likely cost several thousand dollars to install. It is therefore a short-term fix to address the risk of limb failure and would have ongoing cost in order to be maintained on an ongoing basis. When a tree such as this poses risk that is low as reasonably possible, it is considered that cabling and other remediation is an unnecessary cost.
- [81] Continuing with the status quo does seem to be a viable option because the tree currently poses low risk to people and property; and damage to property is unlikely to worsen over time. There are no viable or necessary alternatives to pursue as proposed by the applicant as the cabling is deemed to be unnecessary, and consenting for pruning in accordance with arboricultural best practice is allowed for. Tree maintenance work appears to be sufficient in this case to address any likely issues that may arise with risks of branch failure.

Positive Effects

- [82] There is no significant public benefit that would ensue if the tree is removed, *although it would eliminate any potential risk of impacts on the adjacent power lines.*
- [83] Removal of the tree will alleviate the health and safety concerns held by the applicants and Ms Monaghan of 27A King Street. They raised concern about branches falling on the building as well as seed pods, leaves and branches requiring property maintenance. Removal of the tree will provide peace of mind to the owners and submitters in relation to these safety matters and the property maintenance issue raised.
- [84] Removal of the tree would allow for greater sunlight access into the site and dwelling, and enjoyment of the property as an outdoor play area for the children currently residing on the site.

Cumulative Effects (Assessment Matters)

- [85] 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”.*
- [86] 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’.
- [87] The 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 context of the immediate environment, the loss of the tree, albeit a substantial and relatively prominent one, is not considered to combine with the loss of other vegetation in the area to any noticeable extent that would represent a tipping point in terms of the amenity and character of the area and natural environment.

Effects Assessment Conclusion

- [88] After considering the advice of Mr Roberts and Mr McKinlay on the health and amenity values of the tree, and the other effects noted above, I consider that there will be localised effects on amenity values that are more than minor.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [89] 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.
- [90] In this case, 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))

- [91] In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Operative District Plan and the Proposed 2GP were taken into account when assessing the application.
- [92] The Proposed 2GP is now at an advanced stage. The zoning and rules of relevance to this application are operative, and the objectives and policies are not subject to appeal. Therefore, while regard has been had to the objectives and policies of the Operative District Plan, these are not discussed further in this report because no weight has been given to them, and full weight has been given to the objectives and policies of the Proposed 2GP.

Proposed 2GP

- [93] The following 2GP objective and policies are considered to be relevant to this application:

Scheduled Trees Objectives and Policies

Objective/Policy	Is the proposal Consistent 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 proposal is inconsistent to this objective. The loss of the tree will somewhat degrade the visual landscape and history of the neighbourhood. Mosgiel has limited trees of stature and the only trees of any size are scheduled trees with equivalent protections, of which there is a limited inventory of them. A visual inspection of equivalent scheduled trees in the local area would affirm the status of this tree as a "specimen" example of a scheduled tree in good condition.

Policy 7.2.1.1 Enable removal of a scheduled tree where they are certified as 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.	This policy is not considered to be directly relevant to the proposal given that the tree is not ‘dead or in terminal decline,’ and nor is there any question regarding the tree’s health and vitality. There is therefore no policy support for the removal of the tree based on the grounds of diminished health.
Policy 7.2.1.2 Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless: a. there is a significant risk to personal/ public safety or a risk to personal safety that is required to be managed under health and safety legislation; b. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure; c. there is a moderate to significant risk to buildings; d. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities; d. removal of the tree will result in significant positive effects in respect of the efficient use of land; or X. removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree.	The application is considered to be contrary to this policy, as none of the exceptions to this avoid policy have been satisfied. I do not consider it has been demonstrated that there is a <u>significant</u> risk to personal or public safety; or a risk that is required to be managed under health and safety legislation. The tree does pose some risk. However I accept that the risk is as low as reasonable possible. The policy requires that there is a ‘moderate to significant risk’ to buildings. Based on the comments from the council arborist, I consider the risk to be low and the threshold of ‘moderate’ not met. In terms of adverse effects on infrastructure and network utilities, there is no evidence provided to determine that there is a significant risk of adverse effects on infrastructure or network utilities. Risk to powerlines seems to have been managed over the years via pruning and accordingly no significant adverse effects on power lines has been established. Clause d. arguably has some relevance to the proposal having regard to the concerns of the applicants and the neighbour’s submission, about enjoyment of their property/shading of house and section. However, there is no substantive evidence that this amounts to a significant positive effect in Resource Management terms. The removal of the tree will not result in significant public benefit that could not otherwise be achieved.

Overall Objectives and Policies Assessment

- [94] The above assessment demonstrates that, overall, there is a conflict with the Proposed 2GP significant tree objectives and policies, particularly Policy 7.2.1.2. The proposal is considered ‘contrary’ to that provision, and inconsistent with the objective it serves.

- [95] The Objectives and Policies clearly define the circumstances where the effects from the removal of a scheduled tree are considered acceptable ie. when a tree is dead or in terminal decline. These circumstances do not apply to the proposal. The question therefore becomes whether the risk posed by the tree warrant its removal. In this case I consider that there is not sufficient risk to people and property to reach the threshold required under Policy 7.2.1.2.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [96] 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

- [97] 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.
- [98] Overall, I consider that the actual and potential effects associated with the proposed development will be more than minor and therefore the first 'gateway' test of Section 104D is not met.
- [99] 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.
- [100] 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 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 generally being inconsistent with, the relevant objectives and policies of the Scheduled Trees sections of both the operative and proposed plans. It is contrary to Policy 7.2.1.2 of the 2GP. While, it is arguable whether this proposal passes the statutory test, given the policy provisions of the Operative Plan carry little weight, and will soon be inoperative, I consider that the proposed development does satisfy the second 'gateway' test outlined by Section 104D.
- [101] In summary, the application passes one of the two tests of Section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to undertake a full assessment of the application in accordance with Section 104 of the Act. In turn, consideration can therefore be given to the granting of the consent.

Section 104

- [102] 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 proposal on the amenity values of the immediate locality will be more than minor.
- [103] 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.

[104] 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 policy of the Proposed 2GP, and inconsistent overall with the policy provisions.

[105] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that given the very specific and localised nature of the proposal, there are no particularly relevant provisions within the Regional Policy Statement for Otago; and that overall the objectives and policies of the RPS have been delivered through the 2GP which has been thoroughly assessed in this report.

Other Matters

[106] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. For a non-complying activity, this includes the matter of precedent effects, and the integrity of the district plan provisions.

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. I consider the granting of consent to this application would likely give rise to an undesirable precedent for other applications to remove trees because there are no evidenced reasons that give reason to grant consent due to:

- the effects of the tree's removal being more than minor, and;
- the policy pathway not supporting approval as the tree poses a low risk to people and property.

The 2GP sets a clear policy direction in terms of circumstances wherein scheduled tree removal is anticipated. The proposal does not meet these criteria. As such, I consider that there is a risk of an undesirable precedent being established in the absence of clear evidence to distinguish the application, or policy support that can be considered to outweigh the clear directions set out in the Scheduled Trees Section of the 2GP.

[107] Notwithstanding the above, it is pertinent to note that the removal of any scheduled tree is required to go through this same robust framework of resource consent, and potentially a notified consent process and hearing depending on the circumstances of the tree. The circumstances of each such application can be expected to be different.

[108] I do not consider that the proposal represents a 'true exception' that would not undermine the integrity of the Proposed District Plan.

CONCLUSION

[109] Having regard to the above assessment, I have concluded that the application to allow the removal of scheduled tree T666 at 27 King Street should be declined.

[110] Notwithstanding this I consider there is an avenue under Section 104D for Council to consider granting consent, should it see fit to do so.

RECOMMENDATION

[111] That the application to remove significant tree T1191 be declined.

REASONS FOR RECOMMENDATION

[112] I consider that the likely adverse effects of the proposed activity will be more than minor at a local level and given the particular circumstances relevant to this case.

[113] I consider the proposal is inconsistent with the Objective and contrary to the relevant Policy in the 2GP, and inconsistent with the equivalent Objective and Policy in Section 15 of the 2006 Plan. Given the advanced stage of the 2GP through the statutory process, weight must be given to this Plan.

[114] I do not consider that the proposal represents a 'true exception' that would not undermine the integrity of the Proposed District Plan.

[115] Overall, I consider that the granting of the consent would be inconsistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

[116] Should the Committee decide to grant consent I have included a set of recommended conditions at Appendix 6.

Report prepared by:

Report checked by:



Finn Campbell
Graduate Planner

Campbell Thomson
Senior Planner

19 February 2024

Date 15 August 2024

APPENDIX 1:

THE APPLICATION

APPENDIX 2:
SUBMISSIONS RECEIVED

APPENDIX 3:
COUNCIL OFFICER EVIDENCE

APPENDIX 4:

2001 STEM ASSESSMENT

APPENDIX 5:
2GP VISUAL AUDIT T1191

APPENDIX 6:

DRAFT CONDITIONS

1. *The proposed activity must be undertaken in general accordance with the information provided with the resource consent application received by the Council on 15 May 2024; except where modified by the following conditions.*
2. *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

3. *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:*
 - (a) *The contractor who will be undertaking the works including the contact details of the contractor;*
 - (b) *The date the tree is to be removed.*
4. *At least five (5) working days prior to the works commencing, the consent holder must advise the owners and occupiers of 27A King Street of the date the tree is to be removed.*
5. *Prior to commencement, the consent holder must obtain any necessary permit or 'close approach' consent from the network utility operator responsible for the powerlines adjoining the site.*

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

4. *All waste generated by the removal works shall not cause a nuisance and shall be suitably disposed of within 7 days of the completion of the removal works.*
5. *The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of T666 shall be limited to the times set out below and shall 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 shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise.*
7. *No work is to be undertaken on Sundays or Public Holidays, nor between 8.00pm to 7.30am Weekdays or Saturdays.*

Advice Notes:

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. 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.

APPENDIX 7:
RESOURCE CONSENT DECISION LUC-2015-578