

**BEFORE THE HEARING PANEL APPOINTED ON BEHALF OF
DUNEDIN CITY COUNCIL**

Under	The Resource Management Act 1991 (the Act)
In the Matter	of an application for Resource Consent for the removal of a significant tree, T014
Between	ADAM O'BYRNE AND ANNA O'BYRNE Applicant
And	DUNEDIN CITY COUNCIL Local Authority

BRIEF OF EVIDENCE OF ADAM O'BYRNE

DATED 4 JULY 2025



GALLAWAY COOK ALLAN LAWYERS

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BRIEF OF EVIDENCE OF ADAM O'BYRNE

Introduction

1. My name is Adam John O'Byrne.
2. My wife, Anna O'Byrne and I, are the Applicants and own the property at 33 Preston Crescent, Dunedin.

In response to drainage questions

3. Following the hearing on 13 June I contacted Michael Brown, Sales and Plumbing Manager at Adams. Mr Brown had prepared a quote for Anna and I back in January 2025 regarding two drainage solutions. A copy of that quote is at Page 89 of the Agenda. The reason for contacting Mr Brown was to put a series of questions to him following comments from Council's Planner, Mr Finn Campbell, at the hearing. A copy of our email correspondence is enclosed as **Appendix 1**.
4. Mr Brown also notes that he received a call from a DCC employee about these options before that hearing. This was the first time I learned Mr Brown had been contacted by DCC. I since spoke with Mr Brown to confirm that the DCC employee that contact him was Mr Campbell.

In response to questions about insurance

5. In addition to contacting Mr Brown I also re-engaged with Mr Rhys Lasorsa who was the Project Manager acting for our insurer. This was following comments at the hearing regarding our insurance policy covering future damage from the tree.
6. I put the following question to him from Minute 1: *The Insurance assessment submitted with the application does not appear to correlate the flooding with the presence of the tree, rather the assessment notes that the risk the tree poses the unit is in respect of the roof. This contradicts the comments on Page 73 of the Agenda which state "The recent weather event has clearly shown something needs to be done*

to prevent more damage to the dwelling with the clients insurance company raising concerns the tree roots are contributing to the drainage issues.” Please clarify.

7. His email response is enclosed as **Appendix 2**.

Additional matters

8. I did not consider it necessary at the time, but given the correspondence with Mr Brown I consider it is important to raise now. On 10 June at 2:28pm I received a call from Mr Campbell asking for our permission to carry out a site visit with another drainage expert, presumably appointed by the DCC. I noted to Mr Campbell that we had already had an independent drainage expert (Mr Brown) meet on site with Council’s appointed Arborist (Mr Mark Roberts). I questioned the need for involving another expert so late in the process and that this would be unfair to us.
9. I also raised to Mr Campbell the conversation we had after the submissions were lodged (late March) in which he had assured me that consent would be granted, subject to the hearing panel going ‘rogue’. I did not know what to make of this but it certainly left me with the impression that we would not have to go to extent that we currently are to support our application, including by instructing legal counsel and lodging supplementary evidence. The change in his position in the s 42A Report has caused significant distress and financial hardship which could have otherwise been avoided.
10. Given how close this was to the hearing I sought legal advice as to how I should proceed. That advice confirmed my suspicion that I should decline that request on the basis that it would be a further expert opinion which was being offered outside of the existing evidence timetable and would not allow me the opportunity to respond (by lodging evidence prior to the hearing on 13 June).

Date: 4 JULY 2025

Adam O'Byrne

From: **Michael Brown** <michael.brown@adamsnz.com>
Date: Wed, Jun 25, 2025 at 9:19 AM
Subject: Re: Quote for 33 Preston Crescent
To: Adam O'Byrne <adamobyrne1@gmail.com>

Hi Adam

Thanks for the email, see my reply below.

Trenchless drainage, The only way to achieve this would be by pump. This is not a permanent solution as it would be subject to maintain and power outage.

Cut-off drains upslope, This is not a viable solution as it would direct water directly into the neighbouring property.

Armoring the building, Not sure how to achieve, not a viable solution.

Any other non-invasive method, Should have been addressed by DCC Building control via the consent process when the change of use consented was issued and signed off.

Also note I had a call from a DCC employee and explained all of these options above before the hearing.

The best solution to remedy this issue, is to remove the tree in question and alter the existing ground levels to compliant levels that should have been addressed by DCC Building Control via the building consent process.

Any questions please let me know.

Kind regards

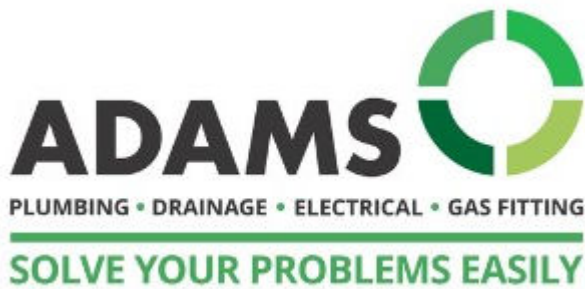
Michael Brown

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From: Adam O'Byrne <adamobyrne1@gmail.com>

Sent: Wednesday, June 18, 2025 10:01 AM

To: Michael Brown <michael.brown@adamsnz.com>

Subject: Re: Quote for 33 Preston Crescent

Kia ora Michael,

You provided a quote for a drainage solution for our property, 33 Preston Crescent, a little while ago.

We are still in the process of determining the outcome for our resource consent to remove the tree on our property that is causing drainage issues for our property.

The DCC planner is suggesting we look at other alternatives that would potentially save us from removing the tree. The drainage options they have suggested are:

- Trenchless drainage
- Cut-off drains upslope
- Armoring the building
- Any other non-invasive method?

Are you able to comment on the viability of these options for our situation, which would be providing a reasonable and sustainable drainage solution?

Happy to discuss further if required, or if there is any other expert you can recommend for a second opinion, that would be greatly appreciated.

Best regards,

Adam O'Byrne

On Tue, Jan 28, 2025 at 3:35 PM Michael Brown <michael.brown@adamsnz.com> wrote:
Hi Adam

Option one is for a sump and drainage as if the tree was removed.

Option two is for a sump and pump if the tree can not be removed to avoid damaging the tree roots.

Kind regards

Michael Brown

Sales and Plumbing Manager, Dunedin

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From: Adam O'Byrne <adamobyrne1@gmail.com>
Sent: Tuesday, January 28, 2025 1:45 PM
To: Michael Brown <michael.brown@adamsnz.com>
Subject: Quote for 33 Preston Crescent

Hi Michael,

I am a little confused about these options in the quote.

Is there a solution to the drainage that can be achieved with the tree gone and the ground leveled out? Just in a hypothetical scenario, given we have applied to have the tree removed to assist us with permanent drainage solution. Without the need for pumps and sumps?

I will forward this onto the DCC to add to our consent application, however it would be good for us to know going forward if there is a simpler and cheaper alternative if the tree was removed.

Many thanks,
Adam

From: **Rhys Lasorsa** <rhys.lasorsa@morganprojects.co.nz>
Date: Mon, Jun 30, 2025 at 3:14 PM
Subject: RE: 33 Preston Crescent - P041337106
To: Adam O'Byrne <adamobyrne1@gmail.com>

Hi Adam,

Thanks for reaching out,

Emailing to whom it concerns regarding the large tree at the front of the property and the effects it has on the sleepout

The property is on a slight hill, with the sleepout towards the front of the property, next to the large tree. This tree overhangs the roof of the sleepout and is causing gradual deterioration of the roof. The insured is required to complete maintenance to the roof and gutter systems more periodically to prevent gradual deterioration. Please keep in mind gradual deterioration is excluded from the policy in all cases. The tree poses a large risk to the occupants inside the sleepout if any branches were to collapse, or if the tree dies and becomes unstable without knowledge from the insured.

The second issue with the tree is that the root bed level sits higher than the floor level of the sleepout. For the insured to adequately prevent further damages to the sleepout from flooding, adequate drainage is required to be installed around the sleepout, The ground level is required to be lowered 150mm below the sleep out with the brick veneer and unpaved surfaces, however currently, this is unachievable with the current large tree in the way. The risk of flooding without the removal of the tree and lowering of ground clearances/drainage

installed remains high. As the tree root system sits higher than the ground level and floor level around the sleepout, excessive amounts of water pools in front of the tree, blocking the water from flowing to the street or down the hill. The tree poses a large risk if the property was to experience another excessive rainfall event. It is highly recommended the tree be removed to mitigate further loss to the sleepout, both by flood and by strong winds or deterioration.

Cheers,



Rhys Lasorsa

Project Manager

Morgan Project Services (NZ) Ltd

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From: Adam O'Byrne <adamobyrne1@gmail.com>

Sent: Monday, 30 June 2025 8:00 am

To: Rhys Lasorsa <rhys.lasorsa@morganprojects.co.nz>

Subject: Re: 33 Preston Crescent - P041337106

CAUTION: This email originated from outside of the organisation.

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Hi Rhys,

Thanks for your time on the phone last week. I appreciate you calling me despite being very busy with other projects.

As discussed, if you could comment further on the issues/concerns/observations from our property related to the flooding and the inability of water to flow past the tree on the front of our property. This is why the water effected the walls on the side of the building all the way up to the bedroom. The assessment that you sent us (attached) was included in our evidence, and the following question has come from the hearing:

The Insurance assessment submitted with the application does not appear to correlate the flooding with the presence of the tree, rather the assessment notes that the risk the tree poses the unit is in respect of the roof. This contradicts the comments on Page 73 of the Agenda which state “ The recent weather event has clearly shown something needs to be done to prevent more damage to the dwelling with the clients insurance company raising concerns the tree roots are contributing to the drainage issues.” Please clarify.

I can recall either talking to you or Cade regarding the tree and root bed being higher than the street level, causing water to pool during the rain event. Any assistance in getting this message across to the panel would be greatly appreciated.

Best regards,

Adam O'Byrne

On Wed, Oct 16, 2024 at 1:23 PM Rhys Lasorsa <rhys.lasorsa@morganprojects.co.nz> wrote:

Hi Adam, Anna

Thanks for you time on the phone, as mentioned please see attached the assessment report for your records.

At the same time I have attached the finalised Reinstatement Scope of Works for your review.

Please confirm you are happy to proceed on the attached scope of works.

Cheers,



Rhys Lasorsa

Project Manager

Morgan Project Services

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