
TO: Hearings Committee

FROM: Karen Bain, Associate Senior Planner

DATE: 17 December 2025

SUBJECT: **RESOURCE CONSENT APPLICATION LUC-2025-420**
27 KING STREET, MOSGIEL

INTRODUCTION

- [1] This report has been prepared based on information available on 17 December 2025. 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 below, I recommend that the proposal be declined.

BACKGROUND

- [3] The consent history for the subject property, insofar as it relates to scheduled tree T666, is as follows:
- Subdivision consent SUB-2015-105 was issued in December 2015, and authorised the subdivision of 27 King Street into two lots (now referred to as 27 and 27A King Street). Land use consent LUC-2015-555 was issued at the same time, to authorise height plane beaches in respect of the dwellings within both new lots; and construction of a fence and provision of vehicle manoeuvring space within the canopy spread of tree T666.
 - Resource consent decision LUC-2015-578 was issued in April 2016, declining an application to remove scheduled tree T666. This decision was made by the Hearings Committee, following a notified hearing.
 - Resource consent LUC-2020-249 was issued in June 2020, and authorised pruning of tree T666 (comprising crown cleaning, crown thinning and crown reduction). Associated with this, a grant of \$250 was made to the landowners, following their application to the Significant Tree Fund (refer RMT-2020-7).
 - Resource consent decision LUC-2024-171 was issued in October 2024, declining an application to remove scheduled tree T666. This decision was made by the Hearings Committee, following a notified hearing. This decision was subsequently appealed; and the appeal later struck out by the Environment Court on the grounds that allowing

it to continue “is an abuse of the court’s process”. A copy of the court’s decision is included as Appendix 1.

DESCRIPTION AND EVOLUTION OF THE PROPOSAL

- [4] A further resource consent application has now been received, seeking to remove scheduled tree T666 under urgency. Tree T666 is a pin oak (*quercus palustris*).
- [5] The application is accompanied by two assessments undertaken by Mr Peter Waymouth of Green Trees Limited, dated 6 August 2025, and 6 September 2025. The first assessment noted that the presence of a 5.0m long occluded trunk crack comprised a medium, or moderate risk. The second assessment recorded an additional defect in the form of “a poorly attached 10m branch with *bark inclusion*” and revised the risk rating to high. In his second assessment, Mr Waymouth suggested that removal of the tree be considered for health and safety reasons.
- [6] A copy of the application, including the Green Trees Limited assessments, is included as Appendix 2.
- [7] The Council’s arborist (Mr Mark Roberts of Roberts Consulting Limited) was engaged to assess whether there was a significant risk to personal or public safety; and whether immediate removal of the tree under urgency was required. Mr Roberts advised that the tree did not need to be removed under urgency.
- [8] Mr Roberts’ advice is included as Appendix 3.
- [9] An arboricultural report on tree T666 prepared by Mr Roberts in May 2024 (in association with resource consent application LUC-2024-171) is considered relevant and helpful, and is included as Appendix 3A.
- [10] Subsequently, and following correspondence between the council and the applicant, it was confirmed that the application would be publicly notified.

Further Arborist’s Report Provided by the Applicant

- [11] On 5 December 2025, the applicants forwarded another arborist’s report to the Council, which had been prepared by Mr William Hagendorn of Valley Arboriculture Limited. In his report, Mr Hagendorn describes the tree as being in excellent health with no signs of disease or insect damage, but raises concerns regarding the presence of a torsional crack in the trunk, and multiple included bark stems that have formed above the main trunk.
- [12] Mr Hagendorn did not consider whole tree failure was imminent but did express concern about how structurally sound the trunk is, noting that because of the size of the tree’s canopy, there is a significant amount of weight and force being applied through the wound area, which has the potential to create a whole tree failure stemming from the trunk of the tree. He recommended two potential courses of action, the first being an aggressive but gradual pruning regime over the timespan of 6-8 years; and the second being removal of the tree.
- [13] If no work on the tree is to be undertaken, Mr Hagendorn recommends that the tree be monitored by an arborist every three years, or after an extreme weather event. If the tree is to be removed, he recommended that it be replaced with a new tree, suitable for the area.
- [14] Mr Hagendorn’s report is included as Appendix 4.

- [15] A memorandum was received from Mr Roberts on 15 December 2025, in which he responded to Mr Hagendorn's report. In the memorandum, Mr Roberts reiterated his advice that the tree did not need to be removed under urgency. He did not recommend that consent be granted to remove the tree, but, if the application was amended to a request for maintenance work on the tree, he would recommend support for an application for crown reduction work to be undertaken.
- [16] Mr Roberts' memorandum is included as Appendix 5.

DESCRIPTION OF SITE AND LOCATION

- [17] The subject property is a flat, 673m² corner site, with frontages to King Street to the west, and Bruce Street to the south. Most of the King Street frontage is hedged, and the Bruce Street frontage is fenced with a timber paling fence. There is a vehicle crossing on each frontage. Within the property, there is a dwelling and attached garage.
- [18] The scheduled pin oak is situated near the north-west corner of the site, in the front garden, as shown in the following image:



Figure 1: Subject property, with tree T666 outlined in green (Source: DCC aerial photography 2023-2024)

- [19] The subject site is legally described as Lot 2 Deposited Plan 495976, held in Record of Title 728796.

ACTIVITY STATUS

- [20] Dunedin currently has two district plans: the Operative Dunedin City District Plan 2006 (the "District Plan 2006", and the Proposed Dunedin City Second Generation District Plan. On 19 August 2024, the Proposed Dunedin City Second Generation District Plan became partially operative and now supersedes the District Plan 2006, except for limited specific provisions and identified areas that are still subject to appeal. Where these provisions and appeals are relevant, the District Plan 2006 must still be considered.
- [21] In this instance, there are no relevant appeals, and this application has been processed with reference to the 2GP only.

- [22] 2GP Plan Change 1 (Minor Improvements) was notified on Wednesday 20 November 2024. The Plan Change was split into two stages. The decision for Stage One was released on Thursday 17 July, and the decision for Stage Two was released on 29 October 2025. All rules that do not have submissions in opposition to them are deemed operative. None of the rule changes are relevant to this application.

Partially Operative Dunedin City Second Generation District Plan 2024 (the “2GP”)

- [23] The subject site is zoned General Residential 2, and is subject to the following overlays:

- Mosgiel Mapped Area
- Kokika o Te Matamata Wāhi Tūpuna Mapped Area
- Mosgiel Wastewater Constraint Mapped Area
- Hazard 3 (flood) Overlay Zone.

In addition, the property is within the area over which designation D274 (Dunedin Airport Flight Fan) applies.

City-wide Activities – Scheduled Trees (Section 7)

- [24] Rule 7.3.2.3 determines that removal and any other work on a scheduled tree that will lead to its death or terminal decline is a **non-complying** activity.

NOTIFICATION AND SUBMISSIONS

- [25] 2GP Rule 7.4.1 determines that applications for removal and any other work on a scheduled tree that will lead to its death or terminal decline are to be publicly notified.
- [26] No written approvals were submitted with the application.
- [27] The application was publicly notified in the Otago Daily Times; and copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on 10 November 2025.
- [28] Eight submissions were received within the submission period, all of which were in support of the application.
- [29] The submissions are summarised in the table below, and full copies of them are included as Appendix 6.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Deb Portors	Support	Supports the removal of the tree due to the risk of damage to property.	No
James Moffat	Support	The tree is not a prominent amenity feature in the local landscape and its removal would not affect the local environment. The tree is not a native.	Yes
Wayne and Sandra Windle	Support	Support removal of the tree due to its “serious structural defects” and the risk it poses to residents and neighbours and their properties. Proximity of powerlines and	No

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
		potential for more strong wind events are such that tree should be dealt with urgently.	
Darrell Cook	Support	In Autumn, leaves from the tree get into the spouting of homes in the immediate area. There is a risk of broken branches falling onto powerlines, and the excessive height of the tree poses a hazard to people and property.	No
Robyn Gutsell	Support	Tree has become so large it is a danger to the property owners and neighbouring houses. Winter leaves form a thick wet carpet on footpaths, which is slippery and slimy. Peter Waymouth's increased risk rating is of huge concern. If the tree fell, power could be cut and impact on elderly people in the area who are reliant on power for heating and telephone landlines.	No
Peter Cox	Support	Tree is a threat to community health and safety. Dropped leaves on driveways and public paths create a slipping/falling hazard. Crack in tree poses a risk, and in windy weather there is frequently flying tree debris, that could harm people, houses or cars.	No
James Monaghan	Support	Tree is unsafe due to the 5m crack and bark inclusions. The tree falling or a branch coming down could disrupt power supply. He has grave concerns for his mother who lives at 27A and is dependent on power supply for connection to emergency services.	No
Elsie Monaghan	Support	Living next door to the tree is a source of stress and anxiety, and whenever there are storms or windy conditions she is too afraid to go outside. Now that she knows there is a crack in it, she has become even more scared, and is afraid to live in her own house. The effects of climate change mean there more unusual extreme weather events, and in a recent event she was so scared she didn't know what to do. Matter falling from the tree has created much work and mental and physical stress for her over the years; is a slip hazard; and is damaging her house.	No

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
		The tree is progressively leaning towards her house and has a big crack in it. As the tree continues to grow the situation will only get worse. The tree will destroy her house if it falls over, and she believes it could kill her. She is 87 years old and doesn't understand why the tree is being given priority over her safety, health and wellbeing. Another tree can be planted in its place - the tree is not even a native tree.	

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

Assessment Rules

[30] Assessment Rule 7.8.2 indicates that when considering applications for the removal of a scheduled tree, the following matters are to be considered:

- a. Objectives 7.2.1, 2.4.1.
- b. Policy 2.4.1.2.
- c. Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:
 - i. 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;
 - ii. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure;
 - iii. there is a moderate to significant risk to buildings;
 - iv. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities;
 - v. removal of the tree will result in significant positive effects in respect of the efficient use of land; or
 - vi. 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 (Policy 7.2.1.2).

[31] Matters a and b are discussed in the Objectives and Policies Assessment below (see paragraphs 92 to 95). Matters c.i-vi are discussed in turn below.

Rule 7.8.2.1.c.i: Significant Risk to Personal/Public Safety or a Risk to Personal Safety that is Required to be Managed Under Health and Safety Legislation

Application

[32] The application suggests that the tree “...represents an unacceptable and unmanaged risk” and seeks “urgent consent for removal of the tree to prevent potential harm to people, property and infrastructure.”

[33] In his second and latest assessment, the applicant’s arborist, Mr Waymouth upgraded the level of risk posed by the tree to “high”, and concluded:

A reasonable, balanced & proportionate approach is to consider removal of the Pin Oak (T666) for health & safety reasons, in order to eliminate undue risk to people & property.

- [34] In the *Discussion* section of his report, Mr Hagendorn advises that “*whole tree failure does not appear imminent*”.

Submitters

- [35] Seven of the eight submissions received consider the tree poses a risk to the safety of people, and one submitter is extremely concerned for her personal safety.

Council’s Arborist

- [36] In his advice, Mr Roberts observed:

...there is no imminent health and safety risk that requires to be managed under health and safety legislation.

Processing Planner’s Assessment

- [37] In determining the level of risk posed by the tree, I consider that weight should be given to the professional assessments of the arborists. This is because, while the concerns of the applicant and submitters are acknowledged, in my view, their respective comments pertain to perceived, and not necessarily actual, risk.
- [38] The arborists differ in their assessment of risk. Mr Waymouth considers the tree poses a high risk; and that a reasonable approach would be to remove it for health and safety reasons. Mr Hagendorn does not believe the tree is in danger of imminent failure. Mr Roberts considers there is no immediate health and safety risk that warrants removal under Health and Safety legislation.
- [39] While the varying views of the arborists are acknowledged, on the basis that the tree remains in situ with no obvious change in its condition in the period since the application was received, I am inclined to give more weight to the assessments of Mr Hagendorn and Mr Roberts.¹ Taking their advice into account, it is considered that the level of risk posed by the tree is not at such a level that the tree should be managed under health and safety legislation.

Rule 7.8.2.1.c.ii: The Tree Poses a Substantial Risk to a Scheduled Heritage Building or Scheduled Heritage Structure

- [40] There are no scheduled heritage buildings or structures in the vicinity of the tree. The nearest heritage structure is the former Allan residence at 46 Gordon Road (which is included as building BX127 in 2GP Appendix A1.1). This building is approximately 145m to the north of tree T666, as the crow flies.
- [41] Therefore, the tree poses no risk to any scheduled heritage building or structure.

¹ It is noted that Mr Hagendorn’s assessment was undertaken on 28 November, i.e. *after* the extreme wind event of 23 October 2025.

Rule 7.8.2.1.c.iii: There is a Moderate to Significant Risk to Buildings

Application

- [42] The application suggests the tree poses a serious risk to two nearby dwellings (presumably the dwellings within 27 and 27A King Street), and that one of the bark inclusions relates to a limb that extends over the house.
- [43] In his assessment dated 6 August 2025, Mr Waymouth advises that there are two houses within the “target zone”. In the International Society of Arboriculture Tree Risk Assessment Form included with his second assessment, Mr Waymouth identifies removal of the tree as “the only viable option” to reduce the risk of damage to property.
- [44] In the *Discussion* section of his report, Mr Hagendorn described the tree’s potential risks and associated consequences (ranging from minimal to significant) but did not indicate what the likelihood of any of these situations occurring was.

Submitters

- [45] Many of the submitters consider the tree poses a risk to houses and/or property.

Council’s Arborist

- [46] At Section 8 of his 2024 arboricultural report, Mr Roberts provides an explanation of risk assessment methodologies. Using the Tree Risk Assessment qualification (“TRAQ”) methodology, he found that at that time, the risk posed by the tree in terms of catastrophic tree failure onto people and/or property was ‘Low’ for the next four years.
- [47] In the same report, Mr Roberts observed that there were no 150mm diameter branches growing directly above the house; and that the house was approximately 6m from the base of the tree. He advised:

If a branch were to fail it would be the narrower tips that would impact the roof of the house... In my experience where branch tips the size of those over the roof at number 27 King Street have failed onto tile roofs similar to the roof at number 27 King Street, the damage has not been significant. I have seen broken tiles, but nothing more. Branches have not gone through the roof or damaged any of the structures below.

- [48] He considered that the likelihood of the tree causing significant damage to property (including 27A King Street) was low (refer to section 9.4 of Mr Roberts’ 2024 report).
- [49] In his 2025 advice, Mr Roberts has advised:

The ‘newly’ identified concerns raised by the applicant’s arborist (Mr Waymouth) were pre-existing. I have assessed them today, and they do not create a heightened risk to people or property ...

...

I saw nothing today to suggest that whole or partial tree failure was occurring.

... The tree still appeared stable, and I saw nothing to suggest that it had been structurally compromised or weakened due to the recent two extreme wind events: September 13 and September 17.

Processing Planner's Assessment

- [50] Since Mr Roberts' most recent assessment, there has been a further extreme wind event (on 23 October 2025), and tree T666 remains in situ. Furthermore, Mr Hagendorn's assessment was undertaken on 28 November and found that overall, the tree is in excellent health and not in danger of imminent failure. Therefore, it is my conclusion that, while the tree (and indeed any tree) might pose a risk to buildings (and people, and property) tree T666 does not pose a level of risk to buildings that might be defined as "moderate to significant".

Rule 7.8.2.1.iv: Removal of the Tree is Necessary to Avoid Significant Adverse Effects on Existing Infrastructure and Network Utilities

- [51] In the 2GP, "Infrastructure" is not defined. "Network Utilities" are defined thus:

Any systems, services and networks associated with:

- *the investigation and generation of electricity, and of other forms of energy such as heat*
- *the transmission and distribution of electricity, and of other forms of energy such as hot water or steam*
- *municipal and domestic water, wastewater and stormwater supply, treatment and drainage*
- *the transmission and distribution of natural or manufactured gas, petroleum or biofuel (excluding where part of bulk fuel storage facilities or service stations)*
- *telecommunications and radiocommunication*
- *navigational aids*
- *meteorological facilities*
- *air quality monitoring facilities; and*
- *river flow recording facilities.*

In order to be considered a network utility under the provisions of this Plan, it is not necessary for a network utility to be operated by a 'network utility operator' as defined in the RMA.

Application

- [52] The application suggests that the tree poses a serious risk to the electrical powerlines in proximity to the tree; and that one of the bark inclusions affects a limb extending over the powerlines. It suggests removal of the tree will have a positive effect on the power network; and is necessary to avoid "*significant adverse effects on public infrastructure*".
- [53] Mr Waymouth has confirmed that there are powerlines within the target zone of the tree; and identifies removal of the tree as "the only viable option" to reduce the risk of damage to the electrical network.
- [54] Mr Hagendorn advises that there are two limbs that affected with included bark that are above powerlines and could cause significant damage to power lines should they fail, although he does not indicate how likely this is.

Submitters

- [55] Several of the submitters believe there is a risk of broken branches, or the tree itself, falling onto powerlines. Two submitters express concern that if the tree fell, power could be cut, and adversely impact on elderly people in the area who are reliant on power for

heating and telephone landlines, and, by association, communication with emergency services.

Council's Arborist

- [56] In his 2024 arboricultural report, Mr Roberts commented on the risk to the power network from falling limbs thus:

This is ... incredibly unlikely to be able to happen. There is a requirement under the Electricity (Hazards from Trees) Regulations 2003 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 (they are informed that their tree is getting close to the powerlines). 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. It is my understanding that a letter has not been sent by the network to the applicant, suggesting that the tree is currently a safe distance from the lines. If the tree encroached beyond the Notice Zone and grew into the Growth Limit Zone (GLZ) the line/network owner will remove the offending branches to prevent risk to their network.

- [57] As noted above, Mr Roberts believes the 'newly' identified concerns raised by Mr Waymouth were pre-existing; and do not create a heightened risk to property. He does not consider that whole or partial failure of the tree is occurring, or likely to occur in the immediate future; or that the tree has been structurally compromised or weakened.

Processing Planner's Assessment

- [58] The following photographs, taken during a site visit on 8 October 2025 show the tree in relation to the powerlines:





[59] Aside from power lines, other examples of network utilities and infrastructure are the DCC reticulated services and roading networks, both of which have the potential to be adversely affected by the root systems of trees. In this instance, no evidence has been provided that would indicate that either have been impacted by tree T666.

[60] Mr Roberts has indicated there has been no obvious change in the tree's condition in the period since the application was received. It also appears that the health and structural integrity of the tree has not changed since the previous application for its removal was assessed in 2024. Accordingly, I do not consider that the tree poses an immediate risk to the power lines/network utilities; or that its removal is necessary to avoid significant adverse effects on existing infrastructure and network utilities.²

Rule 7.8.2.1.c.v: Removal of the Tree Will Result in Significant Positive Effects in Respect of the Efficient Use of Land

[61] In the General Residential 2 Zone within the Mosgiel Wastewater Constraint Mapped Area, it is anticipated that land be used predominantly for residential activity, on sites with a minimum site area of 300m², at a density of one habitable room per 100m² of site area.

[62] The subject site has an area of 673m². DCC building consent records indicate that the dwelling has four, possibly five habitable rooms. As such, on paper, it would theoretically

² Furthermore, it is noted that the *Electricity (Hazards from Trees) Regulations 2003* provide for the security of electricity supply by prescribing spaces surrounding electrical conductors within which trees must not encroach; and setting rules about who has responsibility for cutting or trimming trees that encroach on electrical conductors.

be possible to establish a further one or two habitable rooms within the dwelling. Such development would be subject to compliance with district plan rules, including those pertaining to bulk and location and site coverage (noting that the trunk of the tree is located close to the front boundary of the property).

- [63] Removal of the tree would make some options to achieve such a development more feasible, but I consider that the addition of one or two habitable rooms to an existing dwelling does not comprise a “significant positive effect” in terms of the efficient use of land.³

Rule 7.8.2.1.c.vi: 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.

- [64] To establish what “public benefit” might mean in the context of scheduled trees, I considered the guidance set out within Assessment Rule 7.8.2.1, which indicates that Objectives 7.2.1 and 2.4.1, and Policy 2.4.1.2 are priority considerations. These indicate that the contribution made by significant trees to the visual landscape and history of neighbourhoods is to be maintained. Trees that make a significant contribution to the visual landscape and history of neighbourhoods are to be protected and enhanced.

- [65] From this, it appears that residents of the wider city, including, but not limited to, those in direct proximity to the tree, are to be considered, together with visitors to Dunedin.

- [66] It is clear from the application and submissions received that the landowners and submitters consider that removal of the tree would be of significant benefit to them. Nonetheless, the inclusion of tree T666 in the 2GP Schedule of Trees/Appendix A1.3 indicates that the tree has been identified as being of a wider public benefit. Given the absence of compelling evidence from the arborists to indicate removal of the tree is necessary, I do not consider that removal of the tree will provide for a “significant public benefit” that outweighs the adverse effects of the loss of the tree, particularly in an environment where much infill development continues to occur, with sites being cleared of mature vegetation and trees to provide for residential intensification.

Effects on Amenity Values

- [67] The Resource Management Act defines “amenity values” as:

...those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

Application

- [68] The application suggests the tree poses a serious health and safety risk; and that its failure could cause significant harm to people, property and infrastructure. It notes:

My family are very nervous under this tree with the spring winds upon us.

³ Subdivision of the site into two lots is also possible but, given the location of existing structures within the property, is likely to require removal of the existing dwelling, and would still only yield one or two additional habitable rooms.

- [69] By implication, the applicants perceive the tree as having a negative effect on their amenity; and believe that its removal would have a positive effect, by providing a safer environment for 27 and 27A King Street and eliminating the risk of damage to powerlines.

Submitters

- [70] Submitters also consider that the tree has a negative effect on their amenity. Some submitters believe the tree has serious structural defects; and appear to be very concerned by Mr Waymouth's revision of its risk rating to "high", believing the tree poses a risk of significant harm to people and properties. Some consider that the proximity of the tree to powerlines, together with climate change and the potential for more strong wind events are such that tree should be removed immediately.
- [71] Several submissions refer to the fall hazard posed by falling nuts/acorns, and autumn leaf-fall becoming wet and slippery. Reference is also made to the physical work required to clean up tree detritus; and the potential for the tree to damage the powerlines, causing power failure and associated loss of services. The tree is a source of stress and anxiety to the submitter at 27A, who advises that at times, she is fearful within her home, and too scared to go outside, for fear of harm from, or being killed by, the tree.

Council's Arborist

- [72] In his 2024 arboricultural report, Mr Roberts responded to the applicants' (amenity-related) concerns regarding the size of the tree, and the risk of damage or harm from its partial or complete failure, as follows:

...there are many examples of people and urban communities living near, under, and/or in very close proximity to large trees in their environment. Any risk associated with living near large trees is offset by the benefits the trees provide.

...

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.

...

The applicant notes that they have an elderly neighbour who [believes that their] home is also at risk of damage from falling limbs.

Again the applicant's arborist appears to have created or at least inflated the actual risk associated with this tree, and in this instance possibly created an anxiety situation. As above likelihood of this tree actually causing harm to people or significant damage to property is low.

2024 Assessment by DCC Landscape Architect

- [73] The Section 42A report for 2024 resource consent application LUC-2024-171 included a memorandum from the DCC landscape architect, Mr Luke McKinlay, in which he provided advice on amenity-related matters.
- [74] Commenting on the 2001 STEM assessment for tree T666, Mr McKinlay advised:

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.

[75] Mr McKinlay concluded:

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.

[76] Mr McKinlay's advice remains pertinent to the current application. The full text of his memorandum, including photographs, is included as Appendix 7, and the 2001 STEM assessment he refers to is included as Appendix 7A.

Processing Planner's Assessment

- [77] In general, when considering the views of the applicants and submitters towards the tree, the word that springs to mind is "fear" rather than "enjoyment". As such, the tree cannot be said to have a positive amenity effect for them, quite the reverse.
- [78] Conversely, Mr McKinlay has advised that the tree is a primary focal feature of the surrounding area; and 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. He refers to a decline in the tree canopy cover of this area; and considers tree T666 contributes to the remaining larger tree canopy cover within this part of residential Mosgiel.
- [79] In weighing up amenity values as experienced by the applicants and submitters, compared to the wider environment, my assessment is guided by the district plan. As discussed under the *Rule 7.8.2.1.c.vi* heading above, the 2GP indicates that the contribution made by significant trees to the visual landscape and history of neighbourhoods is to be maintained. Trees that make a significant contribution to the visual landscape and history of neighbourhoods are to be protected and enhanced. My interpretation of this is that when considering effects on amenity values, effects on the amenity of the wider environment have priority.
- [80] As such, based on the advice provided by Mr McKinlay, overall it is considered that removal of the tree would have a more than minor adverse effect on amenity values, as defined in the RMA ("*those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*").

Natural Hazards

- [81] Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance. In addition, under section 106A of the Resource Management Act 1991, the Council may decline the land use consent, or it may grant the land use consent subject to conditions, if there is a significant risk from natural hazards.
- [82] The assessment of the risk from natural hazards requires a combined assessment of all of the following taken together:
- a) the likelihood of natural hazards occurring (whether individually or in combination)
 - b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards
 - c) whether the proposed use of the land would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b); and
 - d) whether the proposed use of the land would result in adverse effects on the health or safety of people.
- [83] The site is within the Hazard 3 (flood) Overlay Zone.
- [84] The proposed removal of the tree would have negligible effect on the level of risk from natural hazards.

Effects Assessment Conclusion

[85] Overall, having regard to the assessment guidance set out under Assessment Rule 7.8.2.1, I consider the adverse environmental effects associated with the removal of tree T666 will be more than minor. This is because:

- the level of risk posed by the tree is not at such a level that the tree should be managed under health and safety legislation
- the tree poses no risk to any scheduled heritage building or structure
- the tree does not pose a level of risk to buildings that might be defined as “moderate to significant”
- it is not necessary to remove the tree to avoid the immediate risk of significant adverse effects on existing infrastructure and network utilities (including adjacent power lines)
- removal of the tree will not result in significant positive effects in respect of the efficient use of land
- removal of the tree will not provide a significant public benefit that could not otherwise be achieved; or that would outweigh the adverse effects of loss of the tree; and
- removal of the tree would have a more than minor adverse effect on amenity values, as defined in the RMA.

[86] Should the Committee assign more weight to the views of the applicants and submitters than to public benefit, it might reach a different conclusion regarding the overall environmental effects associated with the removal of the tree.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

[87] 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 might result from allowing the activity.

[88] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

NATIONAL POLICY STATEMENTS

[89] In accordance with Section 104(1)(b)(iii) of the Resource Management Act 1991, the relevant provisions of a national policy statement must be taken into account when considering an application.

[90] There are no relevant national policy statements.

REGIONAL POLICY STATEMENTS

[91] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. The localised nature and scale of the proposal is such that there are no

especially relevant provisions in the Regional Policy Statement for Otago, particularly as the 2GP reflects the objectives and policies of the RPS in any case.

OBJECTIVES AND POLICIES ASSESSMENT

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

- [92] The 2GP was made partially operative on 19 August 2024. No consideration of the objectives and policies of the District Plan 2006 is required, unless the proposal relates to the specific provisions and identified areas of the 2GP that remain subject to an appeal. In this instance, none of the appeals are relevant to this application.
- [93] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the 2GP were taken into account when assessing the application. These are discussed below:

Strategic Directions and Scheduled Trees Sections

Objective/Policy	Assessment
Objective 7.2.1: <i>The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained.</i> Policy 7.2.1.2: <i>Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:</i> <i>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> <i>b. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure;</i> <i>c. there is a moderate to significant risk to buildings;</i> <i>d. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities;</i> <i>e. removal of the tree will result in significant positive effects in respect of the efficient use of land; or</i> <i>f. 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.</i>	The contribution of Tree T666 to the visual landscape and history of the neighbourhood would not be maintained, should the tree be removed. In my opinion, the removal of the tree does not meet any of the clauses set out under Policy 7.2.1.2. In my environmental effects assessment above I have considered the risks associated with the tree and evidence that the removal of the tree is necessary. While there is some risk associated with the tree, that risk has not been found to be at a level that warrants the tree's removal; and Mr Hagendorn's assessment has set out a pruning/maintenance methodology that indicates retention of the tree is a viable option. Therefore, the proposal is found to be contrary to this objective and policy.
Objective 2.4.1: Form and Structure of the Environment	The 2001 STEM assessment sets out the background to the inclusion of tree T666

Objective/Policy	Assessment
<i>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:</i> <i>a. important green and other open spaces, including green breaks between coastal settlements;</i> <i>b. trees that make a significant contribution to the visual landscape and history of neighbourhoods;</i> <i>c. built heritage, including nationally recognised built heritage;</i> <i>d. important visual landscapes and vistas;</i> <i>e. the amenity and aesthetic coherence of different environments; and</i> <i>f. the compact and accessible form of Dunedin.</i> Policy 2.4.1.2 <i>Identify in a schedule (see Appendix A1.3) trees that make a significant contribution to the visual and historical landscape and amenity of neighbourhoods and other places, and use rules to restrict removal or modification of these trees. Identify significant trees based on the following criteria:</i> <i>a. health and condition of the tree, including: <i>i. vigour and vitality; and</i> <i>ii. age; and</i> </i> <i>b. contribution to the amenity of an area, including: <i>i. occurrence of the species and historic and scientific values;</i> <i>ii. function (usefulness), for example biodiversity supporting or fruit bearing;</i> <i>iii. stature;</i> <i>iv. visibility;</i> <i>v. proximity of other trees;</i> <i>vi. role in the setting;</i> <i>vii. climatic influence; and</i> </i> <i>c. any potential adverse effects, including: <i>i. risk to safety; and</i> <i>ii. risk of potential damage to existing infrastructure, buildings or structures.</i> </i>	within Schedule A1.3. The assessment of Mr McKinlay undertaken in 2024 indicates that the tree continues to make a significant contribution to the visual landscape and history of neighbourhoods. The contribution of Tree T666 to the visual landscape and history of the neighbourhood would not be maintained, should the tree be removed. In my opinion, the removal of the tree does not meet any of the clauses set out under Policy 7.2.1.2 and I therefore consider the purposes of Policy 2.4.1.2 are best achieved through the continued protection of the tree. While T666 has been included in the schedule, this inclusion does not indicate that there is <u>no</u> risk to safety, or risk of potential damage to existing infrastructure, buildings or structures (clause c of Policy 2.4.1.2). The policy anticipates that these risks can be managed by maintenance work on scheduled trees. In this respect, I note Mr Hagendorn's assessment has set out a pruning/maintenance methodology that indicates retention of the tree is a viable option. On balance, the proposal is found to be inconsistent with, but not contrary to, this Strategic Direction objective and policy.

Overall Objectives and Policies Assessment

- [94] The above assessment has found that the proposal is contrary to Objective 7.2.1 and Policy 7.2.1.2; and inconsistent with Strategic Direction Objective 2.4.1 and Policy 2.4.1.2.
- [95] On balance, and in the absence of any strong consistency with the 2GP policy framework insofar as it relates to scheduled trees, the proposed removal of tree T666 is found to be **contrary to** 2GP policy provisions, and “avoid” Policy 7.2.1.2 in particular.

OTHER MATTERS

- [96] Section 104(1)(c) of the Resource Management Act 1991 requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered potentially relevant here. These issues have been addressed by the Environment Court, starting with *Russell v Dunedin City Council* C092/03, where the case law directs the Council to consider whether approval of a non-complying activity will create an undesirable precedent. Where a plan’s integrity is at risk by virtue of such a precedent, the Council is required to apply the ‘true exception test’. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the district plan and/or the proposed district plan.
- [97] However, subsequent case law indicates that the importance of plan integrity and precedent will vary, depending on things such as the nature of the district plan itself, and the local environment in which an activity is proposed (refer *Dye v Auckland Regional Council*, CA86/01).
- [98] The Courts have cautioned against attributing too much weight to purported precedent effects, because every application must be considered on its merits. In *Berry v Gisborne District Council* [2010] NZEnvC 71, the Court observed:

Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined.

- [99] In this instance, the proposal is non-complying because it seeks to remove a scheduled tree that is not dead or in terminal decline. The 2GP specifically identifies the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) as a non-complying activity, and something to be avoided (unless there is substantive supporting evidence pertaining to the criteria set out in Policy 7.2.1.2). In my opinion, the evidence in support of the application does not demonstrate that removal of tree T666 is necessary. As discussed above, Mr Hagendorn and Mr Roberts have indicated that retention of the tree is a viable option; and Mr McKinlay’s assessment confirms that the tree continues to be worthy of inclusion in the schedule. There is nothing exceptional about this application that would set it apart from any similar applications that might follow, and on this basis the removal of tree T666 is considered likely to set an undesirable precedent and put the integrity of the plan at risk.

DECISION MAKING FRAMEWORK

Section 104D

- [100] 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 proposed plan.

[101] As discussed above in the assessment of effects, overall, I consider that the actual and potential effects associated with the proposal will be **more than minor**; and therefore the first limb of Section 104D is not met.

[102] In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of the plan. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan. In this instance, the proposal has been found to be **contrary to** the 2GP policy framework. The proposal therefore fails to meet the second limb of Section 104D.

[103] In summary, the proposal fails to meet either limb of Section 104D.⁴

Part 2 Matters

[104] There is no invalidity, incomplete coverage or uncertainty within the 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

CONCLUSION

[105] Having regard to the above assessment, I recommend that the application be **declined**.

[106] Notwithstanding this, draft conditions are attached as Appendix 8, should the Committee come to a different conclusion and determine that the application should be granted.

RECOMMENDATION

*Pursuant to Part 2 and sections 34A(1), 104, 104B and 104D of the Resource Management Act 1991, and the provisions of the Partially Operative Dunedin City Second Generation District Plan 2024, the Dunedin City Council **declines** the proposal for a non-complying activity, being the removal of scheduled tree T666, at 27 King Street, Mosgiel, legally described as Lot 2 Deposited Plan 495976 (held in Record of Title 728796).*

Report prepared by:



Karen Bain
Associate Senior Planner

Date: 16 December 2025

Report checked by:



Campbell Thomson
Senior Planner

Date: 17 December 2025

⁴ As noted in paragraph 83 above, should the Committee assign more weight to the views of the applicants and submitters than to public benefit, it might reach a different conclusion regarding the overall environmental effects associated with the removal of the tree. If the Committee finds adverse environmental effects to be no more than minor; and that the proposal passes Section 104D(1)(a), the Committee could consider granting consent to the application.