



Report

TO: Hearings Committee

FROM: Amy Young, Planner

DATE: 14 November 2017

SUBJECT: **RESOURCE CONSENT APPLICATION
LUC-2017-372
MICHIE STREET ROAD RESERVE, DUNEDIN
G A PARMENTER**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 13 November 2017. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs 33-85 below, I consider that the proposal is inconsistent with the key relevant objectives and policies of both the Dunedin City District Plan and the Proposed 2GP. However, in my opinion, that the adverse effects on the applicant are sufficient to warrant removal of the tree. As a result, I have concluded that the proposal should be granted.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to remove a Silver Beech tree (*Nothofagus menziesii* also known as *Lophozonia menziesii* and Tawhai) that is listed as T790 in Schedule 25.3 of the Operative Dunedin City District Plan as a Significant Tree.
- [4] A copy of the application, including reasons for the proposed tree removal, further information requested and further information supplied are contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [5] 8 Michie Street is a large residential site that slopes downhill from the road boundary. The majority of the site is covered in a mix of native and exotic vegetation. 8 Michie Street is legally described as Lot 6 Deeds Plan 251 (Computer Freehold Register OT278/175) with a total site area of 4,532m².
- [6] The location of the tree trunk of the protected Silver Beech tree (T790) has been surveyed and is found to be outside 8 Michie Street within the Michie Street Legal Road Reserve. The roots and canopy of the protected tree extend over the legal road boundary into the adjoining property at 8 Michie Street. The applicant estimates the spread of tree roots beyond the road boundary into 8

Michie Street at between 8 and 10 metres. The roots and canopy are estimated to extend over and under the house by approximately 5 to 7 metres.

- [7] The site at 8 Michie Street contains a dwelling with a footprint of approximately 200m². The tree is located to the north east of the dwelling and approximately half of the canopy spread of the tree encroaches over the boundary and approximately a third of the canopy spread is located over the north east corner of the dwelling and a portion of the outdoor paved area.
- [8] Vehicle access to the site is via a formed driveway located within the Michie Street Road Reserve. Vehicle parking associated with the dwelling is also located within the road reserve to the west of the dwelling. There is currently no formed vehicle access within the site due to the location of the existing dwelling and the vegetated bank on the eastern side of the Michie Street carriageway.
- [9] Because the tree is growing on legal road reserve the tree is the property, and responsibility of Dunedin City Council. The applicant has applied to remove the tree due to the effects of the portion of the tree which extends into their property and across their dwelling.

BACKGROUND TO THE APPLICATION

- [10] The site at 8 Michie Street was subject to a recent land slip to the east of the dwelling. The land slip is not in the vicinity of the protected tree but to the east of the existing dwelling.
- [11] Building consent (ABA-2017-1688) has been issued for the establishment of a gabion basket retaining wall structure on the site. The following is an excerpt from the Geotechnical Report provided with the building consent application:

"GeoSolve has been engaged by Graeme Parmenter to provide a detailed design for a retention structure to stabilise a failed slope on his property. The slope failed during flooding in June 2015. During investigations underrunners were observed in the slope face which contributed to the instability in the slope.

Subsurface investigations including Scala penetrometer tests, hand augers and deep dynamic probe tests were undertaken at the top and bottom of the slope. Inferred ground models and sections are based on these results.

A gabion basket wall was chosen as the preferred retention solution as the proximity of the rock at the base of the slope meant that a timber pole wall would be unfeasible meaning a gravity type wall was required. It was determined that a gabion wall would be the most cost effective due to the difficult access and the ease of construction

- [12] Vehicle access is required to construct the retaining wall. The building consent application for the retaining wall states that the proposed construction vehicle access would be a continuation of an existing driveway that currently ends at a large Silver Beech tree. It is proposed that after removal of the tree, this driveway be continued around the side of the slip, providing access to the construction area. Resource consent is required for the proposed earthworks. This resource consent has not yet been applied for as the applicant is awaiting the decision on the removal of the tree.
- [13] Should the Committee grant the land use consent to remove the tree this would provide permission under the Resource Management Act 1991 to remove the tree but this is separate from Council's decision as owner of the tree to decide

whether the tree can be removed. It would be then a matter for the Council to discuss the removal with the neighbour and decide when, or if the tree is to be removed, and who would cover the cost. Trees within Council Road Reserve are managed by the Dunedin City Council Transportation Department.

ACTIVITY STATUS

(Operative Dunedin City District Plan)

- [14] 8 Michie Street is zoned Residential 1 in the Dunedin City District Plan. The eastern portion of the site is within an Urban Landscape Conservation Area (ULCA01). The restriction on removal or pruning of trees is limited to a specific list of trees included as schedule 25.3 in the Dunedin City District Plan. All trees listed in the operative district plan have been assessed using the STEM (Standard Tree Evaluation Method) evaluation. The assessment of this tree determined it did warrant specific protection. The STEM method has three distinct components, being the condition (health) of the tree, the amenity (community benefit) that it provides and its notability. With regard to assessment of 'Condition' and 'Amenity', each tree is assessed and allocated points for the following factors:

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

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

- [15] The points received for each factor are totalled. Any tree that is allocated a sum total of 147 points or more is considered to be 'significant' and generally worthy of inclusion in the District Plan's schedule of trees.
- [16] The tree has a total score of 150 points in the STEM assessment. This assessment was undertaken in 2001. The highest portion of the score is attributed to the "Proximity" of the tree scoring the highest possible score of 27 points, the next highest score is at 21 for "Age". Based on this assessment the tree was retained in Schedule 25.3. The tree was reassessed in December 2016 by Elena O'Neill, Treescape Environmental to provide a condition assessment of a significant tree on road reserve for the Dunedin City Council. Below are her findings:

"Dunedin City Council has requested an arboricultural assessment of significant tree T790 - a Lophozonia menziesii (NZ Silver Beech) at No.8 Michie Street, Belleknowes, Dunedin. A site visit to inspect the tree was carried out on 8 December 2016.

The tree is causing issues for the land owner at No.8 Michie Street. These issues relate to leaf and branch drop, and the roots are said to be disturbing the structures of the house. Concerns for the trees stability have also been raised.

It has been confirmed by a surveyor that the tree is growing on road reserve outside the address.

Assessment

In general, at the time of the assessment the tree is of good health and vitality.

The tree stands very close to the house and overhangs the boundary and house significantly.

There are no signs of live branch failure so it appears that branch drop has been limited to dead wood. The branch unions are sound. Some pruning could be carried out to remove the dead wood and improve safety.

Typical of mature Silver Beech, this tree has a well rounded canopy. Careful pruning will be required to provide clearance from the house, while retaining and achieving an aesthetically balanced appearance.

The tree has good trunk taper and root flare, and has a stable root plate.

Problems caused to the house, patio and path should be assessed and confirmed by a builder in order to assess the extent of the damage.

Recommendations

A builder should inspect the damage caused by the roots. Any work within the dripline would require resource consent.

Issue a pruning consent for the removal of dead, dying, diseased and damaged branches, and for clearance over the house."

[17] A final number has not been attributed to the tree at this stage but comments suggest that the tree is still worthy of protection in relation to the STEM assessment. The original STEM assessment and aerial photograph of the site are attached in Appendix 2.

[18] The following rule in the District Plan applies to any scheduled significant tree:

15.5.1(i) The removal or modification of any tree or pruning, trimming or any other modification or activity within the canopy spread of any tree listed in Schedule 25.3.

[19] As such, the removal of this tree is a **Discretionary Activity** pursuant to Rule 15.5.1(i) of the District Plan. Consequently, resource consent is required.

Proposed Second Generation Dunedin City District Plan (Proposed 2GP)

- [20] The Proposed Plan was notified on 26 September 2015. The 2GP zoning maps indicate that the tree's protection will carry through to the new plan with the same identifier (T790). Activity Status Table 7.3.2- scheduled trees stated that the removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree is considered a non-complying activity.
- [21] At the time of the issuing of this recommendation, none of the relevant Proposed Plan provisions have been given effect or made operative. The relevant provisions are subject to submissions and could change as a consequence of the submission process. Accordingly, the Council need not have regard to the provisions of the Proposed Plan as part of the assessment of this application.
- [22] Overall the application is considered to be a **Discretionary Activity**.

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

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

NOTIFICATION AND SUBMISSIONS

- [25] Written affected party approvals were received from parties in the following table:

Person	Owner	Occupier	Address	Obtained
Katrina Bryant	✓	✓	7 Michie Street, Dunedin	29/07/20 17
Neil Thomas Robb and Anne Lamont Hill Robb	✓		11 Michie Street, Dunedin	23/07/20 17
James Malloy	✓		9 Michie Street, Dunedin	27/07/20 17
Allan Richard Goodman and Roslynd Blair Allan	✓		6 Michie Street, Dunedin	22/07/20 17

- [26] In accordance with Section 104 of the Act, where written approval has been obtained from affected parties the consent authority cannot have regard to the effects of the activity on that person.

NOTIFICATION

- [27] The application was publicly notified in the Otago Daily Times on 9 September 2017.
- [28] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on 6 October 2017.

[29] Two submissions in support were received by the close of the submission period. No submissions were opposed and no submissions were neutral. There were no late submissions.

[30] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 3.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
R B Allan and A R Goodman	Support	▪ The tree impacts on Mr Parmenter's property, and on his ability to access unstable land on his property in order to proceed with stabilization work. Our property adjoins Mr Parmenter's and is also affected by this tree. ▪ The unstable land in need of repair is close to our boundary. We want the stabilisation work to be carried out as soon as possible in the safest manner. The tree significantly shades out property during winter months.	No
Protect Private Ownership of Trees Society (POTS)	Support	▪ The huge overgrown tree has no amenity value, but presents a threat to human lives and to a rate payer's property although growing on a road reserve. ▪ The tree is too large for the site. ▪ It grows on City Council land, the cost of its removal should fall on all ratepayers (i.e. the council) ▪ It poses a threat to people and their property. ▪ The STEM is outdated and is now irrelevant. ▪ Allowing the tree to remain will be a social injustice.	Yes

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[31] 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.

Assessment of Effects

(Dunedin City District Plan)

[32] The assessment of effects is guided by Section 15.6 Trees of the District Plan. Accordingly, assessment is made of the following effects of the proposal:

- Effect of modification;
- Reasons and alternatives;
- Amenity values.

Effect of Modification(Removal) (Assessment Matter 15.6.1)

[33] The applicant has provided an arborist assessment from Elena O'Neill. This report was in support of a tree pruning consent in 2016. Further information as requested from the applicant to support the current proposal to remove the tree (rather than just prune it). The applicant consulted GreenTrees Ltd, Peter Waymouth - Consulting Arborist to provide further comment. He states the following:

"The photos in your application clearly show damage to the patio & concrete path alongside the house, which I agree are caused in part by incremental root uplift by Tawhai tree T790. Where the patio is concerned the outer foundation wall may be lifting but the ponding may also be due to compaction of fill under brick paving, as well as clay shrinkage caused by water uptake by the tree. Remedial action may be to construct a new wooden deck on piles to circumvent the problem of uplift. The concrete path uplift, where there is also ponding due to surface water runoff from the drive could be remedied by reconstructing the path with cobblestone pavers on a bed of 10mm AP20 gravel & crowning the roots as required. Along the small retaining wall abutting the drive a field drain laid at a depth of 500mm running to an outfall beyond the house on the north side would channel water away from the house.

To understand the extent of the root system of a large tree such as the Tawhai tree T790 I have included a diagram overleaf. Tree roots although drawn commonly on plans as circles may often be quite asymmetric in shape; the feeding roots occupy a huge soil volume in the A horizon to a depth of 350mm. Roots systems provide tree stability but when seeking water & nutrients are quite expedient in their search. Under a house is generally a dry place where I would not expect root activity, unless there are under runners or springs. I did not observe any foundation disturbance along the west side concrete path, where uplift was showing.

I hope this answers the drainage question but please contact me if you require any more information."

[34] The applicant states that the change in view from neighbouring houses is seen as more positive than negative. In some cases the removal of the tree would remove an unwanted obstruction of view. In other cases it would remove a familiar object on the skyline. The removal of the tree would also remove

shading effects on neighbouring properties. The applicant states that the tree begins to cast shade onto the house from midday. During the afternoon the west side of the house is in perpetual shade.

- [35] Council's Consultant Arborist, Mark Roberts has inspected the tree and has commented on the application for the tree removal. His report is summarised as follows:

'The tree was visually inspected from ground level on the afternoon of September 7, 2017. The weather was calm and clear. The tree was assessed for condition and potential risk to the house at number 8 Michie Street and those using the house including the patio and/or accessing the house and/or the patio at number 8 Michie Street.

Assessment and observations:

- *At the time of assessment, the tree was in good health; it was evenly foliated, exhibiting good vigour and vitality [image one].*
- *The tree had a relatively evenly foliated canopy and small amounts of deadwood typical for the species.*
- *There is a history of previous pruning work (crown lifting and internal thinning), which appears to have been conducted in accordance with accepted industry practice.*
- *There is an open cavity on the eastern side of the trunk at approximately two meters. The cavity extends up the centre of the trunk for about one meter [image two]. The cavity is not recent and there was considerable response growth on either side of the opening.*
- *The tree had good trunk taper and root flare, and the root plate appeared to be stable.*
- *The trunk is on a slight lean towards the house. The lean appears to be a phototropic response more so than the result of a gradual or sudden trunk or root-plate movement.*

I have assessed the tree using the International society of arboriculture's Tree Risk Assessment Qualification (TRAQ) (Appendix two) [found in Appendix 4: Council Officers Evidence of this report] tree risk assessment tool. Given a five-year time line, the tree poses a low risk to the house at number 8 Michie Street and a low risk to the occupants of the house and those accessing the house at number 8 Michie Street.

Councils Consultant Arborist makes comments on the applicants reasons for removing the protected tree:

- [36] ***The tree has damaged and will continue to damage the path, patio and house at 8 Michie Street.***

- *There are several parts to this argument. Damage to the path and patio from roots. Evidence of this damage is given as water ponding and/or cracks in the brick work. The ponding of water from the drive on the path may be as a result of part of the path being lifted by tree roots or a section of the path settling over time. The same can be said for the patio; that the ponding of water on the patio and/or cracks in the brick*

work may be as a result of part of the patio being lifted by tree roots or a section of the patio settling over time.

- *If the path or patio has been lifted by tree roots, then this is possibly as a result of the construction materials and the type and/or depth of basecourse used. If a surface has low or no permeability, moisture can be drawn to the underside of the surface. As result moisture being present roots may be attracted, and given enough time those roots may have expanded causing the surface above to lift. Correct selection of materials and construction may have prevented this from happening in the first place.*

[37] Damage to the roof and rain gutters caused by leaf litter and plant material.

- *Leaves and plant material have and will continue to fall onto the house at 8 Michie Street. The leaves will continue to collect in the rain gutters and roof valleys. It is possible that the build-up of leaf litter and plant material could cause damage.*

[38] Damage to the roof and rain gutters caused by falling branches.

- *It is common for Nothofagus retain deadwood (dead branches). The Silver beech (*Nothofagus menziesii*) at 8 Michie Street has some deadwood in it, and some of that deadwood is positioned over the roof and rain gutters of the house. Unless it is removed, it is probable that some deadwood will fall onto the house. Due to the size of the deadwood and the fall distances involved it is unlikely that the falling deadwood will cause any actual damage to the roof and rain gutters.*

[39] The tree has damaged and will continue to damage the house.

- *At the time of my assessment I did not observe any structural damage to the house that appeared to have been caused by the tree T790. There is reference to the Smaill report noting 'potential damage' and Peter Waymouth notes that, "... [he] did not observe any foundation disturbance ... "*
- *The Waymoth report notes that damage to the path and patio may be as a result of "... clay shrinkage caused by water uptake by the tree." If this is the case, then the removal of the tree may result in the clay soil expanding due to water not being removed by the tree and the ground around the house may 'heave' [Ground heave is the upward movement of the ground usually associated with the expansion of clay soils which swell when wet]. Removal of the tree may actually cause structural damage to the house.*

[40] The tree endangers those who use the high traffic areas of path and patio

- *The tree poses a low risk to those walking on the path and/or using the patio. This risk rating was generated using TRAQ taking into account the occupancy of the target in the target zone.*
- *In relation to trees, a target zone is defined in the International society of arboriculture's TRAQ as the area where a tree or tree part is likely to land if it were to fail. In this situation, the largest target zone would be a circle centred at the middle of the trunk with a radius of 1.5 times the height of the tree.*

- The targets are listed as 'those who use the path and patio'. One of the main factors when determining risk [the risk of target being impacted by a tree or tree part] is to determine how long the target is the target zone; this is called to as the Occupancy rate. Using TRAQ methodology, the occupancy rate of people using the path and patio at 8 Michie Street would be at the highest Occasional [equal to low-use footpaths, and low-use sections of parks]. With the tree being in good health and free of obvious structural weaknesses and/or large dead branches, and the area within the target zone being defined as the path and patio it is improbable that if the tree or a tree part were to fail it would impact on someone on the path or patio.

[41] **The applicant notes that by removing the tree other trees including existing totara trees could grow.**

- I cannot see how the removal of one tree and replacing it with a potentially larger one will reduce the dangers caused by trees to those who use the path and patio

[42] **The tree poses a danger to the house and its occupants**

- Assessing the tree using the International society of arboriculture's TRAQ tree risk assessment tool. The tree poses a low risk to the occupants inside the house. This is calculated based on the target zone of 1.5 times the height of the tree, the occupancy rate, the fall distance of the tree or tree part and the protection factors afforded by the house. Assessing the tree using the International society of arboriculture's TRAQ tree risk assessment tool. The tree poses a low risk to the house. This is calculated based on the condition and location of the tree.

[43] **The garden is adversely affected by low light and water levels caused by the tree canopy and roots**

- This is an inconsistent argument. Under Detailed Arguments Point 1, the applicant states that water is trapped and unable to drain away into the lawn and in Detailed Arguments Point 9, the applicant lists nine existing smaller trees growing beneath the canopy on T790.

[44] **The tree restricts access of vehicles required to repair a slip currently endangering the house.**

- The tree restricts vehicle access to the slip in the same way the house and patio also restrict vehicle access.

[45] **The STEM assessment of the tree is incorrect in several aspects**

- The application and interpretation of the 1991 STEM assessment is consistent with current use and best practice.

[46] **Planting over 30 years has more than compensated for the loss of amenity caused by the removal**

- I do not agree that restoration and revegetation of a private valley and bush on the applicant's property more than compensates for the removal of a road side tree on public land.

[47] Based on the assessment above it is considered that the existing STEM assessment is still current with the overall state of the tree today.

- [48] Two submissions in support and three affected party approvals show support for the removal of the tree.
- [49] I acknowledge that the tree being located over the north western corner of the dwelling does cast a shadow on the house. The subject site has accommodated the tree for a number of years without any request to remove it. There will be real positive effects gained by the applicants by removing the tree in relation to sunlight and reduction of maintenance costs.
- [50] It is considered that the removal of the tree will have adverse effects as the tree is able to remain with normal remedial tree work and there are alternatives locations for the construction vehicle access.
- [51] This application is very finely balanced between the adverse effects of the tree on the owner and the positive effects on a larger scale in relation to the retention of a large native tree on the schedule. One submitter stated that allowing the tree to remain will be a social injustice. I am not entirely sure what is meant by this statement but I am aware that the applicants are the only people that are essentially directly adversely affected by the tree and the positive effects to the retention of the tree to the wider public suggested by Council's Landscape Architect and Consultant Arborist are not supported by the public through the notification process.

Reasons and Alternatives (Assessment Matter 15.6.2)

- [52] This assessment matter requires the applicant to provide reasons for carrying out such proposed work and any alternative methods or locations which may be available to the applicant to achieve his or her purposes.
- [53] The applicants reasons for requesting the tree removal are as follows:
- The tree has damaged and will continue to damage the path, patio and house at 8 Michie Street.
 - The tree endangers those who use the high traffic areas of the path and patio
 - The tree poses a danger to the house and its occupants
 - The tree shades the house causing an on-going loss of solar energy and a loss of house value.
 - Leaf fall from the tree creates an annual cost to clear leaves of \$500.00
 - The garden is adversely affected by low light and water levels caused by tree canopy and roots.
 - The tree restricts access of vehicles required to repair a slip currently endangering the house.
 - The STEM assessment of the tree is incorrect in several aspects
 - Planting over 30 years has more than compensated for the loss of amenity caused by the removal.
- [54] The applicant provided an assessment from Barry Smaill, Smaill Building and Design, Licenced Building Practitioners who has identified three areas that require remedial works due to the presence of the tree. These areas include the patio which is located to the north of the dwelling, the concrete path located on the western side of the dwelling and the western and northern house foundations all of which are located directly beneath the canopy spread (drip-line) of the protected tree. The builder identified cracking, uplift and ponding and relates this damage to the incremental growth of underground tree roots encroaching from the roadside tree (T790).
- [55] Remedial options for the patio and concrete path provided by Mr Smaill require the demolition of the existing patio and concrete path and rebuilding incorporating bridging components to allow sufficient clearance and future

growth of the tree roots or alternatively remove the tree and demolish and rebuild the patio and concrete path.

- [56] The builder identified that there was a risk of displacement/uplift that would impact on the house foundations. The builder does not confirm that this damage has occurred. The only remedial option for this risk is to remove the tree to prevent future damage.
- [57] The applicant accepts that there are alternatives in relation to the damage caused by the tree to the concrete path and patio, but sees no alternative but removing the tree to prevent inevitable damage to the house foundations.
- [58] The most urgent reason for requiring the tree removed is the ability to construct a vehicle access to the slip site to the rear of the dwelling to allow the transport of 350m³ of aggregate fill to the slip site for the establishment of a gabion basket retaining wall.
- [59] Submissions in support of the application identify this as one of the key reasons why the applicant should be able to remove the tree:

'The tree impacts on Mr Parmenter's property, and on his ability to access unstable land on his property in order to proceed with stabilization work.'

'The unstable land in need of repair is close to our boundary. We want the stabilisation work to be carried out as soon as possible in the safest manner.'

- [60] The applicants identify the potential for accessing the slip site via an existing driveway on the neighbouring property at 6 Michie Street. This alternative has been rejected on several grounds:
- Introducing heavy vehicles above the slip could cause further slip damage and would potentially damage an existing foul sewer pipe.
 - The neighbours would object to the disturbance to their lives and the adverse effects of loss of privacy.
 - The destruction of a Lophomyrtus hedge between 6 and 8 Michie Street would affect privacy until a replacement hedge grew.
 - The existing driveway on 6 Michie Street would likely need resealing after being used by construction vehicles.
- [61] The applicant also provides an alternative which would require dumping the aggregate and construction materials at the road side and reloading into a vehicle able to transport the material to the area of construction. This alternative has been discounted due to double handling and requirement for additional equipment. The applicant has not explored the alternative of establishing a temporary construction access to the north of the tree direct from Michie Street.
- [62] Council's Consultant arborist concluded that the tree has a low risk of danger to those who occupy the space beneath it. The applicant's builder has offered alternative solutions for damage caused by tree roots to the path and patio. It is unclear if the tree will damage the house foundations and to what extent. If damage was to occur, would it be able to be remediated.
- [63] Based on the assessment of both arborists above I consider that it is possible to retain the tree and provide an alternative access to the slip face. However, it is obvious with a tree of this scale that pruning work and maintenance would

be required on an ongoing basis and with any properties surrounded by trees that ongoing maintenance and regular cleaning of gutters will be required.

Amenity Values (Assessment Matter 15.6.3)

[64] The applicant states that the removal of the tree will have minor effects on the following (but does not give reasons why they believe these will be minor):

- Potential impact on bird and insect life
- Potential effect on amenity value of neighbourhood vegetation
- Restriction on parking and traffic movement on 8 Michie Street during felling
- Noise from chainsaws during felling
- Possible effects on road batter of stump and root removal.

[65] The Council's Landscape Architect, Barry Knox visited the site on the 11th September 2017 to undertake an assessment of the tree. Mr Knox assessed the proposal in regards to amenity values as follows:

"This memorandum is in response to a request for comment on the application to remove a scheduled tree, T790 (NZ Beech), protected in Schedule 25.3 of the Dunedin City District Plan. The tree was also carried over to the Second Generation Plan (2GP) Significant Tree Schedule. The original STEM assessment was made in 2001 and the trees scored 150. The required "pass" total is 147. I completed a site visit on 11 September 2017 and undertook the "Amenity Evaluation" part of the STEM. Photographs taken at this time are attached as Appendix 2. [Found in Appendix 4: Council Officers Evidence of this report]

Background

There was recent correspondence on the exact location of T790. The tree is located very close to the boundary between 8 Michie Street and the adjoining road reserve, and a survey plan was completed which shows that the tree is located within the reserve.

Prior to this a Second Generation Plan (2GP) audit of all trees on Schedule 25.3 was completed, and T790 was recommended for carry over to the 2GP Schedule in 2013. In terms of the location, when it had been identified late in 2016 that the tree is outside 8 Michie Street, it was recommended that the 2GP map should be altered to reflect this new information.

For assessment of resource consent applications for removal of significant trees an updated STEM assessment is usually completed by the in-house landscape architect and (in the last year or so), by a consultant arborist. An arborist usually looks at the "Condition Evaluation" section of the revised STEM assessment, but in this case my understanding is that this has not been completed. However, I note that the application has reviewed the current STEM assessment and also includes reports on the condition of T790 from two consultant arborists, Elena O'Neill and Peter Waymouth, so there is considerable recent arboricultural information to draw on.

General Comment

With STEM reports there are two broad assessment categories – arboricultural ("Condition") and "Amenity" – and my role for applications to remove a scheduled tree or group of trees is to comment on the amenity related matters.

The tree's amenity values have two components – the wider community effects, and site specific, local effects.

Overall, it is my opinion that this tree retains particular wider community amenity values which make it a useful addition to the Michie Street streetscape, and these values do not appear to me to have diminished since the original STEM assessment was completed. However, as the AEE outlines in a thorough manner, there are very site localised factors which diminish the overall amenity benefits.

The STEM assessment is mainly designed to assess the wider holistic aspects of tree values, and these values tend to overshadow to some extent the very localised benefits/disadvantages.

From a broader amenity perspective, I consider the tree continues to have merit for inclusion on Schedule 25.3. However, I acknowledge the very real adverse amenity issues for the specific site on which it is located, and it is clear these have increased since the original STEM assessment was completed. As well, I have only completed the part of the STEM which my expertise covers, and I have retained the arboricultural values as originally assessed.

With this approach, the "mark" obtained in my updated STEM is 144, which, assuming no increase in the Condition Evaluation part of the assessment, would result in insufficient points to warrant continued inclusion on the Schedule. The partially updated STEM assessment is attached as Appendix 1. [See Appendix 4: Council Officers Evidence of this report]

Wider Community Amenity Benefits

This is a large, significant tree in this urban location. It adds a "softening" visual effect for the local community and provides a natural character element which offsets the less natural impact of built dwellings along Michie Street.

There would be a moderate reduction in the value of community visual amenity if the tree were to be removed. There are other smaller nearby mature trees which assist with providing a "softening" natural impact, and the removal of the beech tree would probably initially be noticed as a negative impact. In time, however, other nearby vegetation would continue to assist with maintaining the natural character. I note that the general area around the subject property is planted with numerous trees and shrubs and there is a moderate to high degree of natural character.

Localised Amenity Effects

T790 in many respects has outgrown the site space it occupies, and its scale is such that it now encroaches too close to the nearby dwelling. There are a number of localised adverse amenity aspects outlined in the application which do not specifically form part of the STEM assessment, but which need to be considered as part of any hearing to consider removing a tree from the schedule.

Concluding Comments

This is still an impressive tree which from a broad neighbourhood perspective improves and enhances the natural character and amenity value of the surrounding urban area. However, with a reassessment of the "Amenity Evaluation" part of the STEM, the new total is just 144, below the accepted pass mark for inclusion on the schedule.

When the "Condition Evaluation" (arboricultural) part of the STEM is reassessed, it seems likely that T790 would either not pass, or be "on the cusp".

If the outcome of a hearing process were to be the removal of T790 from Schedule 25.3, from an amenity perspective this would be able to be partially compensated by other existing nearby vegetation along Michie Street, and within the subject property."

- [66] I agree with the Council's Landscape Architect that there are adverse amenity issues for the specific site on which it is located, and it is clear these have increased since the original STEM assessment was completed in 2001 and these increased adverse effects should warrant a reduction in the STEM assessment score in regards to amenity. In my opinion any adverse effects of the tree are only on the applicants property and the road reserve. If removed, its disappearance will have effects on the appearance of the surrounding environment. It is my opinion that the proposed removal of the tree will have an adverse effect on the amenity values on the wider environment but this is balanced with the positive effects on the owners of the property at 8 Michie Street. The owners of the properties adjoining 8 Michie Street and across the road to the west of the tree have provided affected party approval for the removal of the tree. These are the properties who are the most likely to be affected by its removal in relation to views and amenity values of the neighbourhood. Councils Arborist notes the real adverse effects on the property owners of 8 Michie Street and also recognises the extensive vegetation that is located in and around the site that would help to mitigate the effects of the tree removal should the committee make that decision.

- [67] Submissions in support of the tree removal note that the tree is too large for the site. In my opinion it is not too large for the site but it is growing too close to the house. The owners of the site are now affected by a land slip that has made the requirement of a vehicle access necessary. By removing the tree they will achieve a higher amenity values in relation to solar gain and will be able to undertake remedial works to protect their house from damage from land instability.

Proposed 2GP

- [68] At time of writing, there are no applicable assessment rules, because the only 2GP rules that have legal effect currently are ones relating to rural subdivision and the clearance of indigenous vegetation. I do not believe that the removal of one native tree triggers this rule as the rule relates to indigenous plant community and not a single tree.

Effects Assessment Conclusion

- [69] There were no submissions in support for the retention of the tree. The reports from Council's Arborist and the Applicants Arborist identify that there is no evidence of damage to the house foundations and that there are suitable alternatives for building a patio and path. The possibility of damage to the house from soil expansion if the tree is removed is also identified.

- [70] The argument for removal of the tree in order to gain access to the rear of the site to undertake remedial work on a slip in my view should be given little weight. The applicant has alternative locations where access could be formed without removing the tree. Therefore, I believe that the removal of the tree should be based on the effects that the tree has on the owners compared to the positive effects gained by the wider public by retaining the tree. The submissions in support and affected party approvals indicate that there is not a wide level of public interest in supporting the retention of the tree.
- [71] I agree with the arborists that some of the adverse effects of the tree can be mitigated. But that the effects of loss of sunlight and perceived risk of danger are very real to the applicant. Council's Landscape Architect rightly suggests that the tree is not to be seen in isolation and that the subject site has a number of large trees that will still benefit the surrounding environment for years to come. The majority of these are within an Urban Landscape Conservation Area and are also offered a level of protection under the Operative and Proposed Plans.
- [72] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be acceptable.

[73] **OBJECTIVES AND POLICIES ASSESSMENT**

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

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

Dunedin City District Plan

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

[76] **Sustainability Objectives and Policies**

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	The proposal is inconsistent with this objective and policy. I consider that the removal of the tree will enhance the amenity values of the residential section on which it is sited. However, it is noted that the Council's Landscape Architect and Council's Consultant Arborist considers that the removal of the trees will have adverse effects on the broader community amenity value it currently contributes.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	The proposal is to remove one of Dunedin's scheduled trees. This tree is a sizable tree. Although, it is not a rare tree it has become

Policy 4.3.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	arguably too big for the location. The proposal is considered to be inconsistent with this objective and policy.
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[77] **Trees Objectives and Policies**

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 15.2.1	Maintain and enhance the amenity and environmental quality of the City by encouraging the conservation and planting of trees.	The proposal is inconsistent with these objectives and policies. The tree is very large and overhangs a large proportion of the applicants dwelling. However the removal of the tree does little to contribute to the objectives and policies. Council staff consider the tree should remain on the Schedule of Protected Trees.
Policy 15.3.1	Ensure that landowners and developers are aware of the environmental benefits of trees and encourage them to conserve trees and undertake new plantings whenever possible.	
Objective 15.2.1	Protect Dunedin's most significant trees.	
Policy 15.2.2	Identify and protect trees that make a significant contribution towards amenity and environmental quality.	

[78] **Residential Objectives and Policies**

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 8.2.1	Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied or mitigated.	The proposal is inconsistent with this objective and policy. The removal of the tree will enhance the amenity values of the subject site and satisfy the two submissions and affected party approval which support the applicant's contention that the tree is too big for the site and should be removed. However the removal of the tree will detract from the amenity of the wider residential area. Significant trees are a feature of many residential areas of the city.
Objective 8.2.2	Ensure that activities do not adversely affect the special amenity values of rural townships and settlements.	
Policy 8.3.1	Maintain or enhance the amenity values and character of residential areas.	

Proposed 2GP (Proposed Plan)

- [79] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The following 2GP objectives and policies were considered to be relevant to this application:
- [80] **Objective 11.2.1 and Policies 11.2.1.3, 11.2.1.5 and 11.2.1.12 (Natural Hazards Section)**, which seek to ensure the risk from natural hazards, including climate change, is minimised, in the short to long term. The applicants require the removal of this tree to gain access to part of their site which is subject to land stability. The slip has been assessed by a geotechnical engineer and no comment was made on the removal of any vegetation including the significant tree located to the north west of the dwelling.

Proposed Dunedin City District Plan

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 7.2.1	The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained.	The proposal is inconsistent with these objectives and policies. The tree is not certified as being dead, or in terminal decline, the tree is not subject to a court order under Section 333 of the Property Law Act 2007. Council's Consultant Arborist comments indicate that there is some risk to personal/public safety or property but not considered "significant" he classes the risk at low with some remedial work required.
Policy 7.2.1.1	Enable the removal of a scheduled tree where they are certified as being dead or in terminal decline by a suitably qualified arborist or where subject to an order for removal in terms of Section 333 of the Property Law Act 2007.	
Policy 7.2.1.2	Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless: 1. there is a significant risk to personal/public safety or property; or 2. the tree is shading existing residential buildings to the point that access to sunlight is significantly compromised; or 3. the removal of the tree is necessary to avoid significant adverse effects on public infrastructure; and these adverse effects cannot be reasonably mitigated through pruning and the effects outweigh the loss of amenity from the removal of the tree.	

Policy 7.2.1.3	Only allow the modification of a scheduled tree where: 1. the work is undertaken in accordance with best arboricultural practice, by a suitably qualified arborist and will maintain or improve the health of the tree; 2. any adverse effects from the modification of the tree on amenity values are avoided or, if avoidance is not possible, no more than minor; and the modification is necessary to improve the health of the tree or to mitigate adverse effects of the tree on safety, sunlight access, or damage to property or infrastructure.	The proposal is contrary with this policy as the proposal is for removal of the tree.
Policy 7.2.1.4	Require earthworks, network utilities activities, new roads and additions and alterations to roads, buildings, structures, and site development that involves the laying of an impermeable surface, to be set back from a scheduled tree an adequate distance to avoid: 1. damage to the scheduled tree; and potential future adverse effects caused by the tree on amenity values, structural integrity of buildings or infrastructure, or safety that may lead to future demand to remove the tree.	The proposal is contrary to this policy as the applicant seeks to remove the tree.

Overall Objectives and Policies Assessment

- [81] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is **inconsistent** with those provisions. However, this is to be expected as it is not possible that an application for the removal of a

scheduled tree to be consistent with these Objectives and Policies when the sole purpose of the Objectives and Policies for the protection and retention of healthy significant trees.

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

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

DECISION MAKING FRAMEWORK

Part 2 Matters

It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP in respect to the protection of trees in the urban environment. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104

- [83] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will be acceptable.
- [84] 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 inconsistent with the key objectives and policies relating to both the Dunedin City District Plan and the Proposed 2GP.
- [85] Section 104(1)(b)(iii) requires the Council to have regard to any relevant regional policy statement. The regional policy statement does not have a great bearing on the current application. I do not consider it relevant for my assessment of the proposal.

CONCLUSION

- [86] Having regard to the above assessment, I recommend that the application be **granted** subject to appropriate conditions.

RECOMMENDATION

LUC-2017-372

Pursuant to section 34(1) and 104B, and after having regard to Part II Matters, and section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to the **discretionary activity** being the removal of Silver Beech tree (*Nothofagus Menziesii*) that is listed as T790 in Schedule 25.3 of the Operative Dunedin City District Plan as a Significant Tree located on legal road reserve and encroaching into the property at 8 Kilgour Street, Dunedin on the site legally described as Lot 6 Deeds Plan 251 (Computer Freehold Register OT278/175) with a total site area of 4,532m².

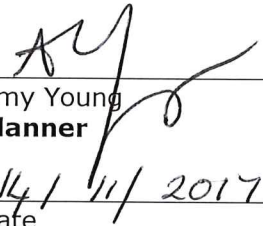
REASONS FOR RECOMMENDATION

- a) Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity and will not be significant.
- b) While the proposal is considered to be inconsistent with the key relevant objectives and policies of both the Dunedin City District Plan and the Proposed 2GP this is because the plan makes no policy provision for significant trees that anticipate their removal.
- c) The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago.
- d) The proposal has the potential to cause adverse effects on amenity of that can be avoided, remedied or mitigated.
- e) Granting of the proposal will be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Having regard to the above assessment, I consider it is warranted to **grant** the application to remove the tree.

Report prepared by:

Report checked by:


 Amy Young
Planner
 14/11/2017
 Date


 Campbell Thomson
Senior Planner
 14/11/17
 Date