

Application Form for a Resource Consent

50 The Octagon, PO Box 5045
Dunedin 9054, New Zealand
Ph 03 477 4000 | www.dunedin.govt.nz

PLEASE FILL IN ALL THE FIELDS

Application details

I/We Keith Noel McArley + Sally Elizabeth McArley (must be the FULL name(s) of an individual or an entity registered with the New Zealand Companies Office. Family Trust names and unofficial trading names are not acceptable: in those situations, use the trustee(s) and director(s) names instead) hereby apply for:

☒ Land Use Consent ☐ Subdivision Consent

I opt out/do not opt out (delete one) of the fast-track consent process (only applies to controlled activities under the district plan, where an electronic address for service is provided)

Brief description of the proposed activity: Removal of Protected Trees at 516 Highgate, Dunedin due to ill health of trees and damage to walls surrounding property.

Have you applied for a Building Consent? ☐ Yes, Building Consent Number ABA _____ ☒ No

Site location/description

I am/We are the: ☒ owner ☐ occupier ☐ lessee ☐ prospective purchaser of the site (tick one)

Street Address of Site: 516 Highgate Dunedin

Legal Description: LOT 1 DP 20160

Certificate of Title: OT/118163

Contact details

Name: Keith Noel McArley (applicant/agent (delete one))

Address: 516 Highgate Dunedin Postcode: _____

Phone (daytime): 464-0588 Email: keithmcarley@gmail.com

Chosen contact method (this will be the first point of contact for all communications for this application)

I wish the following to be used as the address for service: ☒ email ☐ post ☐ other _____ (tick one)

Address for invoices or refunds (if different from above)

Name: Above

Address: Above

Bank details for refunds

Bank Account Name: KN + SE McArley

Account Number: [REDACTED]

Ownership of the site

Who is the current owner of the site? We are ~~Co-trustees~~ McArley Family Trust

If the applicant is not the site owner, please provide the site owner's contact details:

Address: Above Postcode: Above

Phone (daytime): Above Email: Above

Occupation of the site

Please list the full name and address of each occupier of the site:

McArley Family - Keith, Sully and Nicholas.

Monitoring of your Resource Consent

To assist with setting a date for monitoring, please estimate the date of completion of the work for which Resource Consent is required. Your Resource Consent may be monitored for compliance with any conditions at the completion of the work. (If you do not specify an estimated time for completion, your Resource Consent, if granted, may be monitored three years from the decision date).

N/A

(month and year)

Monitoring is an additional cost over and above consent processing. You may be charged at the time of the consent being issued or at the time monitoring occurs. Please refer to City Planning's Schedule of Fees for the current monitoring fee.

Detailed description of proposed activity

Please describe the proposed activity for the site, giving as much detail as possible. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please provide proposed site plans and elevations.

Removal of protected trees due to ill health of the trees, the resultant aesthetics and damage to wall facing the street due to the root system of one tree (suspected cause)

Description of site and existing activity

Please describe the existing site, its size, location, orientation and slope. Describe the current usage and type of activity being carried out on the site. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please also provide plans of the existing site and buildings. Photographs may help.

N/A

(Attach separate sheets if necessary)

District plan zoning

What is the District Plan zoning of the site? Residential

Are there any overlaying District Plan requirements that apply to the site e.g. in a Landscape Management Area, in a Townscape or Heritage Precinct, Scheduled Buildings on-site etc? If unsure, please check with City Planning staff.

Nil

Breaches of district plan rules

Please detail the rules that will be breached by the proposed activity on the site (if any). Also detail the degree of those breaches. In most circumstances, the only rules you need to consider are the rules from the zone in which your proposal is located. However, you need to remember to consider not just the Zone rules but also the Special Provisions rules that apply to the activity. If unsure, please check with City Planning staff or the Council website.

Removal of protected trees.

Affected persons' approvals

I/We have obtained the written approval of the following people/organisations and they have signed the plans of the proposal:

Name: _____

Address: _____

Name: _____

Address: _____

Please note: You must submit the completed written approval form(s), and any plans signed by affected persons, with this application, unless it is a fully notified application in which case affected persons' approvals need not be provided with the application. If a written approval is required, but not obtained from an affected person, it is likely that the application will be fully notified or limited notified.

Assessment of Effects on Environment (AEE)

In this section you need to consider what effects your proposal will have on the environment. You should discuss all actual and potential effects on the environment arising from this proposal. The amount of detail provided must reflect the nature and scale of the development and its likely effect. i.e. small effect equals small assessment.

You can refer to the Council's relevant checklist and brochure on preparing this assessment. If needed there is the Ministry for the Environment's publication "A Guide to Preparing a Basic Assessment of Environmental Effects" available on www.mfe.govt.nz. Schedule 4 of the Resource Management Act 1991(RMA) provides some guidance as to what to include.

As Above

(Attach separate sheets if necessary)

The following additional Resource Consents from the Otago Regional Council are required and have/have not (delete one) been applied for:

☐ Water Permit ☐ Discharge Permit ☐ Coastal Permit ☐ Land Use Consent for certain uses of lake beds and rivers ☒ Not applicable

Declaration

I certify that, to the best of my knowledge and belief, the information given in this application is true and correct.

I accept that I have a legal obligation to comply with any conditions imposed on the Resource Consent should this application be approved.

Subject to my/our rights under section 357B and 358 of the RMA to object to any costs, I agree to pay all the fees and charges levied by the Dunedin City Council for processing this application, including a further account if the cost of processing the application exceeds the deposit paid.

Signature of Applicant/Agent (delete one):

John Munn

Date: 24/7/20

Privacy – Local Government Official Information and Meetings Act 1987

You should be aware that this document becomes a public record once submitted. Under the above Act, anyone can request to see copies of applications lodged with the Council. The Council is obliged to make available the information requested unless there are grounds under the above Act that justify withholding it. While you may request that it be withheld, the Council will make a decision following consultation with you. If the Council decides to withhold an application, or part of it, that decision can be reviewed by the Office of the Ombudsmen.

Please advise if you consider it necessary to withhold your application, or parts of it, from any persons (including the media) to (tick those that apply):

- ☐ Avoid unreasonably prejudicing your commercial position
- ☐ Protect information you have supplied to Council in confidence
- ☐ Avoid serious offence to tikanga Maori or disclosing location of waahi tapu

What happens when further information is required?

If an application is not in the required form, or does not include adequate information, the Council may reject the application, pursuant to section 88 of the RMA. In addition (section 92 RMA) the Council can request further information from an applicant at any stage through the process where it may help to a better understanding of the nature of the activity, the effects it may have on the environment, or the ways in which adverse effects may be mitigated. The more complete the information provided with the application, the less costly and more quickly a decision will be reached.

Fees

Council recovers all actual and reasonable costs of processing your application. Most applications require a deposit and costs above this deposit will be recovered. A current fees schedule is available on www.dunedin.govt.nz or from Planning staff. Planning staff also have information on the actual cost of applications that have been processed. This can also be viewed on the Council website.

Development contributions

Your application may also be required to pay development contributions under the Council's Development Contributions Policy. For more information please ring 477 4000 and ask to speak to the Development Contributions Officer, or email development.contributions@dcc.govt.nz.

Further assistance

Please discuss your proposal with us if you require any further help with preparing your application. The Council does provide pre-application meetings without charge to assist in understanding the issues associated with your proposal and completing your application. This service is there to help you.

Please note that we are able to provide you with planning information but we cannot prepare the application for you. You may need to discuss your application with an independent planning consultant if you need further planning advice.

City Planning Staff can be contacted as follows:

In Writing: Dunedin City Council, PO Box 5045, Dunedin 9054

In Person: Customer Services Centre, Ground Floor, Civic Centre, 50 The Octagon

By Phone: (03) 477 4000

By Email: planning@dcc.govt.nz

There is also information on our website at www.dunedin.govt.nz.

Dear Campbell

Thank you for your letter of 28 September. I have attached this for reference (Appendix I).

At the outset I wish to advise that Sally and I really wish that both trees were healthy and doing well especially the elm tree which, when first visiting the property, immediately struck us as a desirable and significant feature. It really added a sense of "grandeur" when entering the property.

Specifically in response to your letter requesting further information I advise the following:

1. The State of the Trees since owning the Property and Rate of Decline.

We have owned 516 Highgate since 2010. Reflecting back over this period is fraught with difficulty as it covers a long period of time so what I say now should be interpreted with some caution but I think it would be fair to say (and as noted by Mark) that the health of the trees more noticeably changed after we did renovations including some landscaping in 2012 thru 2013. To this end I attach a series of images of the beech tree in chronological order from Google earth (Appendix II). As you can see the state of decline has been both dramatic and accelerating. I only have an image of the elm tree in 2019 (Appendix III) but as you can see it is similarly in very poor health.

Comparing the rate of the decline of both trees is difficult but both as you can see are in very poor health. However because the elm tree was right outside our bedroom and we walked right past it every day, this was the first of the two trees we noticed had health problems. However inspection of the elm tree when things didn't improve also caused us to look more closely at the beech tree which also revealed significant deterioration.

2. Remedial Work

We have attempted to improve the health of the trees since we noticed the decline. We have had a total of 3 visits from arborists with varying remedies (including minimal thinning) but more recently on advice from Mark we have fed the trees to ensure they are getting adequate nutrients etc. However this has not helped and as outlined by your letter the problem could well be underground and in particular water retention.

3. Landscaping and Retaining Walls.

As noted by Mark in your letter and as alerted to above, the declining health of the trees did appear to become more evident after the alterations. We did plaster over the existing brick wall following the line of the hedge and also altered the angle of the retaining wall between the driveway and house entranceway with the impact of slightly reducing the total lawn area. This change however was primarily further along from the elm tree.

The landscaping design and implementation was undertaken with total consideration of protecting both the elm and beech trees. The width of the driveway and the turning area, for example, was designed around the location of the elm. I have spoken to Stewart

Construction who oversaw the renovations and landscaping of the property. To the best of their re-collection the root system of the trees was not touched during this process. Sally (my wife) and myself also were on site every day while works were underway and we are almost certain the main (obvious) root system of either tree was not touched, otherwise we would have taken appropriate action as again the trees added to the grandeur of the property. I can't comment on feeder (or less obvious) root systems other than to say that I also strongly doubt these were touched but I must concede it was possible.

We did have to build up the centre of the lawn as it was retaining moisture and was slightly recessed. However the water retention issue has not improved and in fact has appeared to be somewhat worse than before the landscaping improvements.

The walls by the beech tree was not touched at all and there were no landscaping changes (earthworks) whatsoever other than plastering over the existing brick wall.

Again I wish to state that the trees were part of the property we purchased and added to the "grandeur" of the property. It was most certainly NOT our intent to cause the trees any harm.

4. Future Remedial Work.

I am not a qualified arborist so as to the feasibility of future remedial work I will defer to Mark. However I can say that past remedial work in 2011, 2016 and 2019 has not improved the health of the trees in any way whatsoever and they continue to decline. Assuming water retention is a significant issue then it is hard to see practically what more can be done. Noting again I am not a qualified arborist but to me it is not a question of if but simply when they will die completely.

In addition, and as outlined in my initial communication to you, the beech tree is NOW causing damage to the now plastered original brick wall facing the street. I have attached a photo to this letter (Appendix IV). In response to the damage on the wall, in March I got Stewart Construction (once again) to repair cracking to the wall and repaint it – these repairs are evident in the photo. However as the photo attached shows some 6 months later the wall has cracked again. This in Mark's and Stewart Construction's opinion is caused by the root system of the beech tree. Hence at the current rate I am likely to have to undertake at least annual repairs and more likely in future bi annually as the growing roots are now clearly exerting increasing pressure on the wall. Stewart Construction have given me an estimate of some \$2000 each time a repair is done. Repairs will have to be undertaken on a regular basis as the wall faces the street and the footpath is directly under the wall. I don't think it is reasonable for me to have to fund repairs of this magnitude.

Finally, and sadly, the beech tree from time to time is also losing dead or dying branches and some of these are landing in the property next door which is owned by an older lady, Ms Louise Croot. Ms Croot has, independently of us, raised concerns about the tree as it is losing smaller branches into her property and she is particularly concerned about larger branches falling in future. Ms Croot supports removing the beech tree. You are welcome to contact her if you wish as I believe Council has a file recording her concerns.

5. Mitigation of the Impact Of Removal

The planting of replacement trees in our property will, I assume in time, be subject to the same problems that have given rise to the current situation. However if this is what Council wishes to happen then we will of course implement your recommendations.

An alternative mitigation approach and being mindful of the objectives of the second generation of the District Plan in mind (particularly with a view to maintaining the overall greenery of the area in future) Sally and I would be prepared to fund the planting of replacement trees in McMillan Park which is directly opposite our property. The replacement trees can grow there in a healthy environment.

6. Comments on the Objectives of the Second Generation District Plan

There are two major comments I wish to make in reference to the Second Generation of the District Plan.

Firstly and sadly, the trees at least in my opinion (again I will defer to Mark) are in a state of terminal decline. Therefore they can be removed.

Secondly the beech tree is causing (not just AT risk of causing) damage to my property and there is reasonable risk of it causing damage to Ms Croot's property. Although not specifically covered by the District Plan, and as alerted to above, Sally and I are very cognisant of the anxiety this tree is causing to Ms Croot.

7. Commentary on the Process and Notification

There is the possibility that objections to the trees' removal will be lodged. The only real objection can be the removal of "beautiful trees". My commentary on this point is that there was indeed a time that such trees were beautiful and clearly in fact if they were now beautiful I would not be seeking their removal. However they have not been beautiful for some years now and they are now eyesores that will continue to deteriorate. The last photo of Appendix II show the loss of foliage that now exists at a time of year when there should be significant spring foliage.

If I can supply any additional information to assist you in your decision making process, please do not hesitate to contact me.

Regards



Keith and Sally McArley

(APPENDIX I)



28 September 2020

Keith McArley
516 Highgate
Dunedin 9010

Via email: keithmcarley@gmail.com

Dear Keith>

LUC-2020 -341-516 Highgate - Request for further information

Further to my email of 28 August I confirm that after initial assessment of your application to remove the Scheduled Trees T608 and T609 on your property, the Dunedin City Council has determined that further information is required pursuant to section 92 of the Resource Management Act 1991.

Requested information:

The further information required is detailed below. It will help the Council to better understand the reasons why the removal of both T608 and T609 is necessary, the existing environment of the site and changes that may be relevant to these trees, and the extent to which the loss of the trees might be mitigated.

1. Could you please provide evidence expanding upon your comments about the health of each tree. The feedback I have received from Mark confirms that both the trees are in a state of decline. His advice suggests that there may be some options for remedial action, but he cannot guarantee they will be successful. It would help if you could clarify the state of the trees since you have owned the property and remedial work you have undertaken to maintain the trees. In particular, it would be useful to understand how recent and rapid the decline of the trees has been, and whether it has been the same for both trees.
2. Information is needed on the circumstances of the retaining walls affected by the trees and related construction work. The advice from Mark suggested that some construction work may have contributed to the decline of the trees. If so, it would be useful to know that any damage to the root system of the trees had been unintentional and not a result of any deliberate cutting of the root system where the effect on the trees would have been obvious. It is my understanding that it can often be disturbance of smaller feeder roots that inadvertently leads to serious consequences for the health of a tree.
3. Can you confirm your reasons, in the light of Mark's advice, why you consider that remedial work to help the trees survive is simply not practical for either of the trees. It would help to comment on the state of the trees when previous tree maintenance work was undertaken in 2011 and 2016 and compare this with the state of the trees now in terms of the extent of dieback and obvious signs of irreversible decline. Is either tree any better than the other in terms of health and form.

4. Please advise if you propose replacement planting of a tree on your property as a means of offsetting the loss of the trees, or any other form of mitigation. If not, please indicate reasons why you consider this mitigation is neither practical or necessary.
5. In the light of the above, please comment on how you see the removal of both trees meeting the attached objectives and policies of the 2nd Generation District Plan. As part of the necessary statutory considerations the planner writing a report on the application and Consents Hearing Committee will give particular attention to Policies 7.2.1.1 and 7.2.1.2. I note that Policy 7.2.1.1 would support the removal of a tree where there is clear evidence the decline of the tree is terminal.

Responding to this request:

Could you please provide the requested information if possible by 20 October 2020. If you find you need more time to provide this information let me know by email closer to the date. If you do not agree to provide the requested information, then I will need written confirmation of that from you.

The processing of your application has been put on hold pending receipt of this information.

Restarting the processing of your application:

The processing of your application will restart from when the above requested information is received, or from the date that you have provided confirmation that you do not agree to providing the requested information.

Once the processing of the application restarts:

As noted in my email applications to remove listed Significant Trees are publicly notified and considered by the Consents Hearing Committee or a Commissioner depending upon the circumstances. There is no cost to you as the applicant in terms of consent processing fees, but it is very important to include sufficient information as part of their proposal to not only meet statutory requirements but convince the decision maker to exercise their discretion to grant consent. Essentially you only get one shot at this because if consent is declined the Committee/Commissioner cannot reconsider their decision. The only way forward if consent is declined (or if you are unhappy with conditions if consent is granted) is to Appeal the decision to the Environment Court or re-apply in the future after the trees are dead.

Once you have provided all the requested information, then the Council will proceed with public notification pursuant to sections 95A of the Resource Management Act 1991. The information provided could reduce the likelihood of submissions in opposition, and it may provide an evidential basis to persuade the Committee to accept your position that both trees should be removed.

If you do not provide the requested information then your application will be processed and determined on the basis of the information currently provided with the application. The Council may decline the application on the grounds that it has inadequate information to determine the application. In making an assessment on the adequacy of the information provided with an application, the Council must have regard to any request made for further information.

Please do not hesitate to contact the writer on 474 3627 if you have any questions or concerns regarding the above request or the further processing of the application.

Yours faithfully



Campbell Thomson
Senior Planner

(APPENDIX I CONT'D)

7.2 Objectives and Policies

Objective 7.2.1

The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained.

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:

- a. there is a significant risk to personal/public safety or a risk to personal safety that is required to be managed under health and safety legislation;
- b. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure;
- c. there is a moderate to significant risk to buildings;
- d. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities; or
- e. removal of the tree will result in significant positive effects in respect of the efficient use of land.

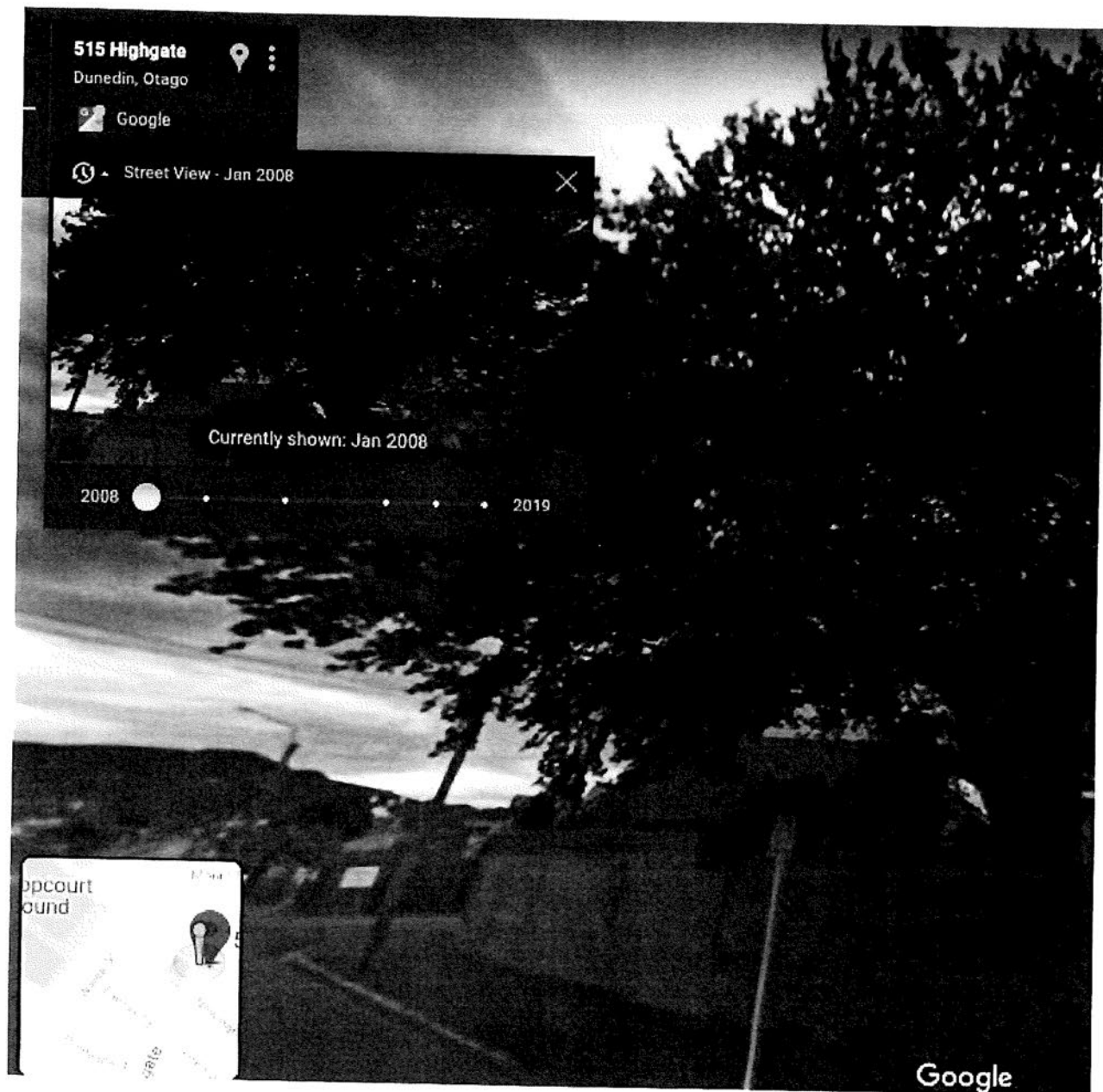
Policy 7.2.1.3 Only allow the modification of a scheduled tree where:

- a. 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;
- b. any adverse effects from the modification of the tree on amenity values are avoided or, if avoidance is not practicable, no more than minor; and
- c. 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.

Policy 7.2.1.4 Require earthworks, public amenities, network utility activities, new roads and additions and alterations to roads, buildings, structures, additions and alterations and site development activities that involve the laying of an impermeable surface to be set back from a scheduled tree an adequate distance, or, where appropriate, to use trenchless methods to avoid:

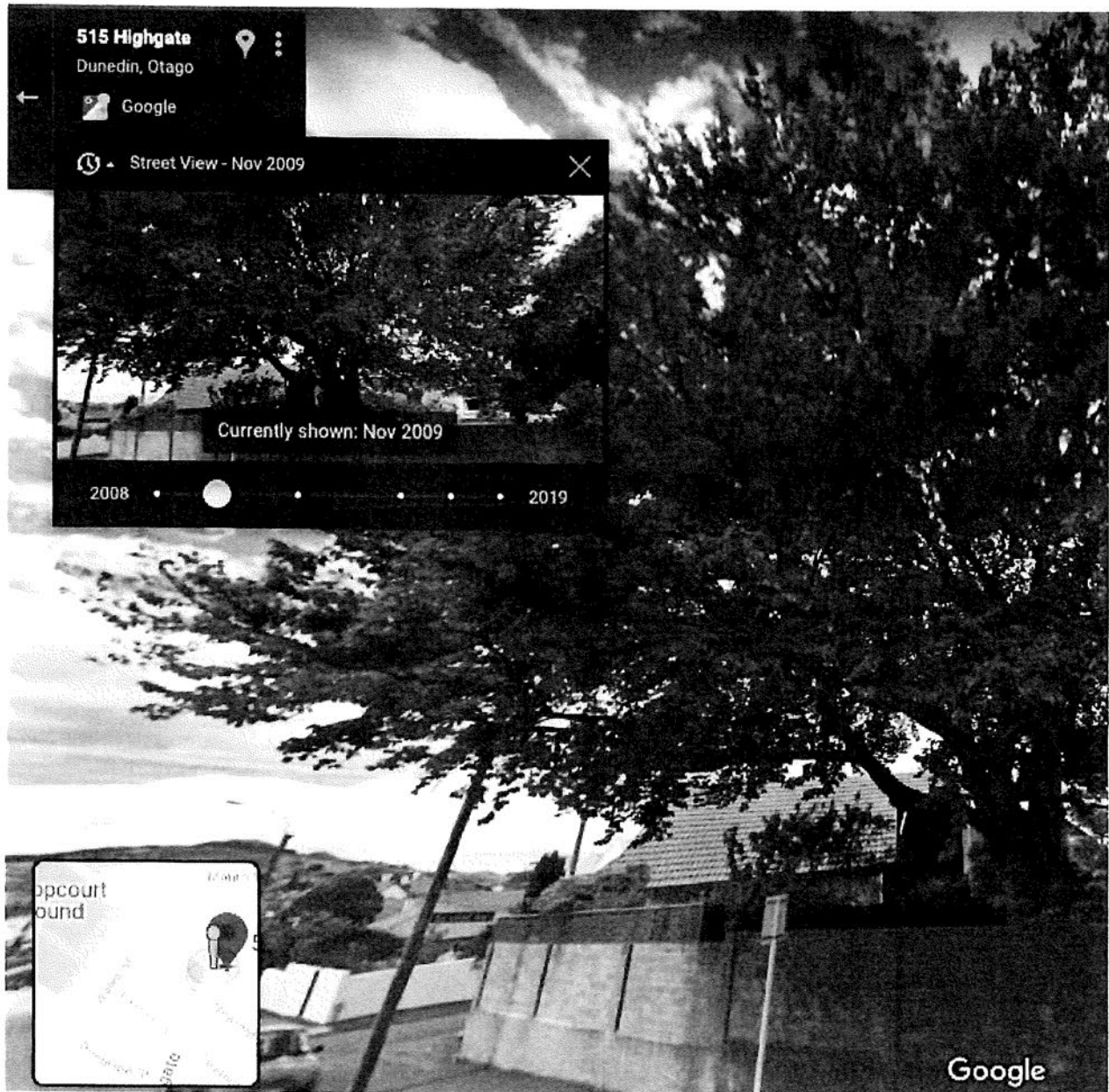
- a. damage to the scheduled tree; and
- b. potential future adverse effects caused by the tree on amenity values, structural integrity of buildings or infrastructure, or safety that may lead to future demand to remove the tree.

(APPENDIX II)



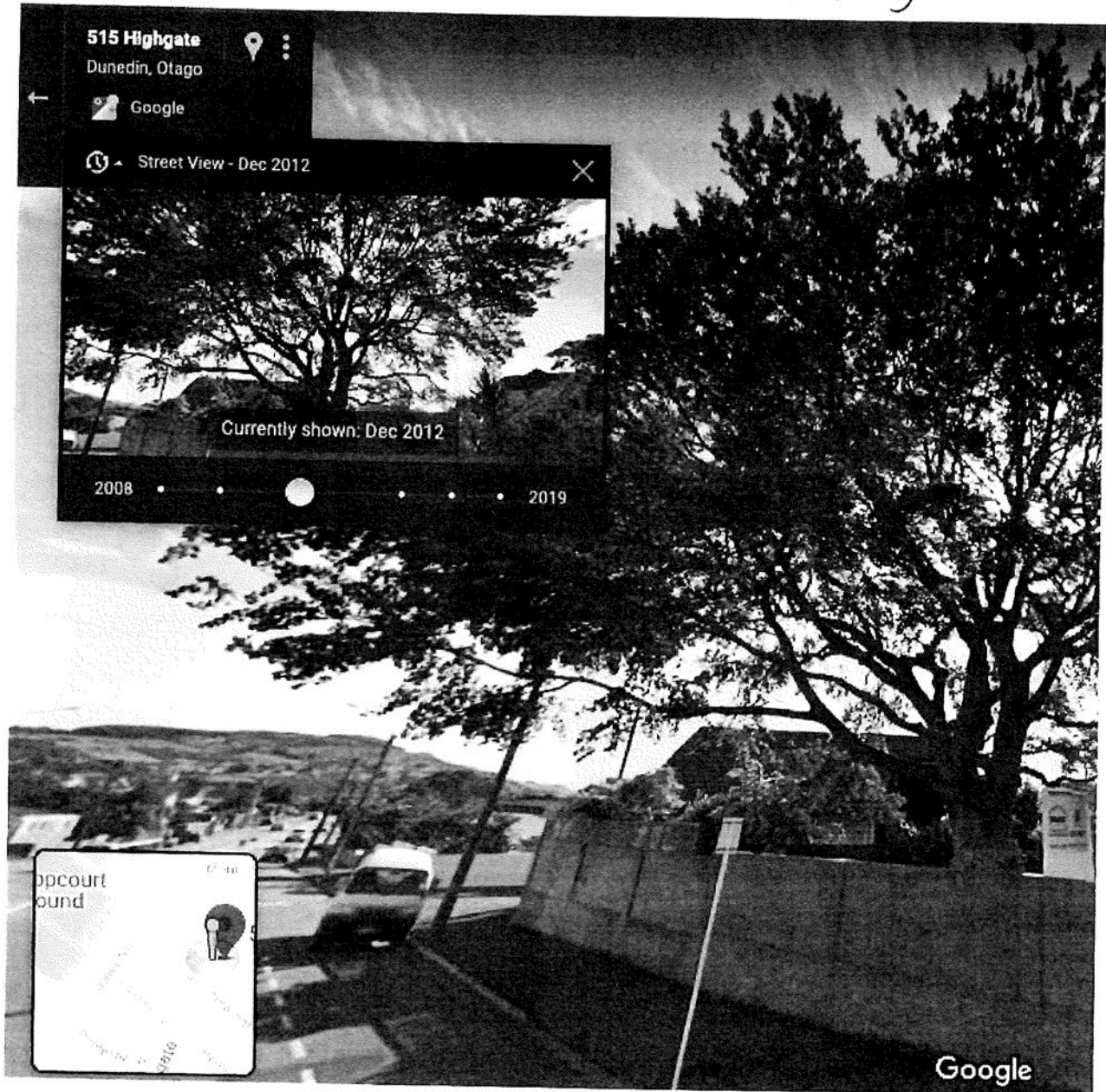
Jan 2008

(APPENDIX II CONT'D)



Nov 2009

(APPENDIX II CONT'D)



Dec 2012

(APPENDIX II CONT'D)



Sept 2019

(APPENDIX III)



Sept 2019

(APPENDIX IV)

Previous
Repair

New
Cracking

