
TO: Hearings Committee

FROM: Caleb Park, Planner

DATE: 13 May 2022

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2021-665
110 Gladstone Road North, Mosgiel

APPLICANT: F Wesseling and V A Wesseling

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 13 May 2022. 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 (RMA) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs [91] to [97] below, I consider that the proposal is contrary to the relevant objectives and policies of the Proposed Second Generation District Plan (Proposed 2GP). As a result, I have concluded that the proposal to remove the tree should be declined.

DESCRIPTION OF SITE AND LOCATION

- [3] The subject site is located on the south-eastern side of Gladstone Road North, and has a total area of approximately 1,656m². There is an existing three-storey dwelling on the south-eastern portion of the site approved under building consent ABA-2003-301213. The dwelling contains a three-bay garage and a rumpus room on the ground level, and four bedrooms and living and kitchen area in the upper levels.
- [4] There is a large scheduled tree - Wellingtonia - Sequoiadendron giganteum – located near the north-eastern corner of the site. The tree is approximately 41.5m in height with a natural dripline (the outer edge of the canopy) extending approximately 9m from the tree and has a diameter of approximately 1.9m. The tree listed as 'T499' in Schedule 25.3 of the Operative Dunedin City District Plan and in Appendix A1.3 of the Proposed Second-Generation Dunedin City District Plan.
- [5] Access to the site is provided from Gladstone Road North via a formed vehicle crossing and driveway. It is noted that the driveway area also extends to the rear of the site providing informal access to the adjoining property to the south at 110A Gladstone Road North, which is owned by the applicant.

- [6] The site is legally described as Lot 1 Deposited Plan 520920 held in Record of Title 822779. There is a consent notice (11117309.4) registered on the Record of Title which outlines the reduced setback allowed for any future development on the subject site.

DESCRIPTION OF PROPOSAL

- [7] Resource consent is sought to remove the scheduled tree – Wellingtonia - Sequoiadendron giganteum located on the site in order to optimise the use of the land. In particular, the application notes that the removal of the tree is to enable suitable space to accommodate the construction of a future a garage/ hobby shed to fit at least three vehicles.
- [8] However, no plans or further details have been provided regarding the proposed accessory building. Accordingly, for the sake of clarity, the scope of this resource consent application will only be in relation to the removal of the scheduled tree and does not directly encompass the construction of a specific garage building.
- [9] Additionally, it is noted that the applicant wishes to remove the tree also for the following reasons:
- (i) Due to the tree affecting the sunlight access to the dwelling and future garage.
 - (ii) Unable to landscape the area as desired due to the location of the tree.
 - (iii) The tree is missing a portion of branches along one side of the tree, and showing signs of decline at the top.
 - (iv) It is a very tall tree for a low-density residential area and not visually appealing.
 - (v) The tree will affect the future subdivision of the site.
 - (vi) The size and growth of the tree will adversely affect the roads, footpath, and Council mains that will require remedial works in the future.
- [10] It is noted that there are no supporting documents other than the application and email provided by the applicant on the 20 January 2022 which included a summary or reasons for the proposed removal of the tree, photos of the tree, and a page of the LIM report in 2001 which noted that there was no scheduled tree listed on the property.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [11] The applicant has mentioned in the application and further information provided on 20 January 2022 that the sequoia tree was not listed as being a scheduled tree at the time of purchase on the 15 November 2001 based on the LIM report dated 28 August 2001. Hence, they have expressed that no consultation was undertaken regarding the inclusion of this tree in the schedule and feel it is unfair that the tree is protected in a manner that restricts their use of the site.
- [12] The inclusion of the scheduled tree subject to this application was publicly notified on 16 February 2002 under Variation 11 (Schedule 25.3 Significant Trees) of the Dunedin City Proposed District Plan at that time. The owners of the site that had trees that were proposed to be included in the schedule were all notified through the public process of the variation of the district plan and were given an opportunity to make a submission.
- [13] Accordingly, it was identified in the decision for Variation 11 that the applicant, Mr Wesseling, made a submission (V11/234) to delete the Wellingtonia tree (Tree ID 1483)

and the four oak trees (Tree ID 1480, 1481, 1482, and 1484) that were located on the subject site from Schedule 25.3. The primary reason for the submission was related to private property rights and being opposed to any requirement for a resource consent related to the scheduled trees.

- [14] The decision report for Variation 11 noted with regards to the property rights and costs, the Committee recognised the public amenity benefit that trees provide and that a range of measures have been introduced to reduce the burden on owners of significant trees related to the costs and constraints related to the maintenance of the trees, including free arboricultural advice, no charge for resource consents, and funds to assist with maintenance of the trees.
- [15] With regards to the property values being affected by the trees, the Committee acknowledged that these effects were difficult to determine due to the response to the purchase of a property with a significant tree from an individual who may find it either positive or negative depending on their aspirations. The trees were also assessed to be healthy at the time of the decision and it was noted that any future safety risks associated with the deterioration of the trees could be managed through emergency provisions.
- [16] In summary, the Committee had considered that the group of these Wellingtonia trees along this portion of Gladstone Road North (ID 1471, 1472, 1473 and 1483) were impressive and highly visible trees that makes significant contribution to the amenity values in the area. However, it was noted that some of the oak trees were suppressed, and the Committee were of the view that the oak trees recommended for inclusion on the Schedule (1480, 1481, 1482, & 1484) are less significant and their contribution to amenity values were less important. Hence, Mr Wesseling's submission was accepted in part by the Committee and the four oak trees identified as being Tree ID 1480, 1481, 1482, and 1484 were deleted from the schedule, whilst the inclusion of the sequoia tree in the scheduled was retained. The decision for Variation 11 was made on the 25 July 2003.
- [17] It is noted that all the trees (including the oak trees) that were along the frontage of the subject site have been removed except for the current Wellingtonia tree.

Background to STEM analysis

- [18] The restriction on removal or pruning of trees is limited to a specific list of trees included in the 2GP's Appendix A1.3 of significant trees. All trees listed in the District Plans have been assessed using the STEM (Standard Tree Evaluation Method) evaluation.
- [19] The STEM method has three distinct components, being condition (health) of the tree, the amenity (community benefit) that it provides and an additional 'bonus score' for notability (not always attributed). 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

- [20] 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.
- [21] 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. This number of points was therefore the 'benchmark' for considering the tree is significant, however, 147 points is not a universal 'benchmark' and other Councils in other cities may use a different number.
- [22] The Wellingtonia tree on the site had an original STEM score of 174 points (87 for condition and 87 for amenity) at the time of assessment on the 9 May 2001.

Consent History

- [23] Resource consents SUB-2015-56 & LUC-2015-303 were approved on 31 July 2015 to undertake a three-lot subdivision of the parent title of the subject site and to enable reduced setbacks of the proposed lots. The subject site was created as Lot 1 of this subdivision.
- [24] Resource consent LUC-2021-213 was approved on 10 May 2021 to undertake works within the dripline of the Schedule Tree T499. The proposed works involved the replacement of the kerb, channel, and footpath of the adjacent road reserve within Gladstone Road North.
- [25] It is also noted that the current dwelling on the site was approved under building consent ABA-2003-301213, with the Code of Compliance for the dwelling being issued in 2007.

ACTIVITY STATUS

- [26] Dunedin currently has two district plans: the operative Dunedin City District Plan (ODP), and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.
- [27] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.
- [28] The Proposed 2GP was notified on 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. Some rules became fully operative following the close of submissions, where no submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved. There are no rules

relevant to the zoning of the site that have been appealed. There have also been no appeals to any of the rules relevant to this application. Therefore, the rules of the 2006 District Plan that apply to this activity are considered inoperative in accordance with Section 86F of the Resource Management Act 1991 and the relevant provisions under the Proposed 2GP can be considered fully operative in this instance.

Dunedin City District Plan (ODP)

- [29] The subject site is zoned **Residential 6** under the ODP. The subject site contains the scheduled tree – T499 (Wellingtonia - Sequoiadendron giganteum).

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

- [30] The subject site is zoned **Low Density Residential** under the Proposed 2GP and is subject to the Dunedin Airport Flight Fan (D274) designation overlay. The subject site contains the scheduled tree – T499 (Wellingtonia - Sequoiadendron giganteum).
- [31] Gladstone Road is classified as being a Collector Road under the Proposed 2GP Road Classification Hierarchy.

City Wide Activity

- [32] The proposed removal of the scheduled tree is provided for as a **non-complying activity** under Rule 7.2.3.3 of the Proposed 2GP.

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

- [33] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ('NESCS') came into effect on 1 January 2012 and ensure that land affected by contaminants in soil is appropriately assessed and made safe for human use. 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. If a proposed activity involves any of the following on land that is being used, or has been used, or is more likely than not to have been used for a HAIL activity then the Regulations apply to this proposal:

- removal of fuel storage systems and associated soil,
- soil sampling,
- soil disturbance,
- subdivision of land,
- a change in land use;

- [34] A HAIL Search Report (HAIL-2015-3) was undertaken for the underlying parent title at the time of the subdivision consent SUB-2015-56. The report identified that residential and light manufacturing activities had taken place on the site. However, the planning officer at the time of the subdivision noted that there none of the uses related to any specific activities listed as being a HAIL activity. Therefore, it was concluded that the Council does not hold any record or has found evidence which suggest that the subject site has been historically used for a HAIL activity. The site has been used for residential activities since at least 1957 and based on the current information available, there is no record of information which suggests that any further HAIL activities had been undertaken on the site.

- [35] As such it is considered that the site is not considered to be a 'piece of land' as defined under Regulation 5(7) of the NESCS. Therefore, in accordance with Regulation 5(9) the NESCS is not relevant to this application.

Overall Activity Status

- [36] Overall, the application is considered to be a **non-complying activity** under the Proposed 2GP.

NOTIFICATION AND SUBMISSIONS

- [37] No written approvals were submitted with the application.
- [38] Rule 7.4.1.1 specifically requires the proposed removal of the scheduled tree to be publicly notified in accordance with Section 95A of the RMA. Accordingly, the application was publicly notified in the Otago Daily Times on 2 February 2022.
- [39] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal which included the owners of the properties that are adjacent to the site and that may have clear sightlines towards the tree. Submissions closed on 7 March 2022.
- [40] Six submissions were received by the close of the submission period. Four submissions were in support, one submission was opposed, and one submission was neutral.
- [41] No late submissions were received at the time of this report.
- [42] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
D.S. & A.O. Taylor	Support	The tree is no longer suitable in a residential setting. They note that the tree appears to be thinning out and dead at its tip and may become a hazard. They recommend that this tree be replaced with something more suitable.	No
B. Anderson & K. Dynes	Support	The submitters also have a similar Wellingtonia tree in front of their property (118 Gladstone Road North) in the road reserve and considers that the tree is no longer suitable in its location and has become a nuisance to the property owner(s) and surrounding neighbours. They agree with the applicant's assessment concerning the tree on their property in term of the 'risk to the neighbourhood' and 'effect on natural resources', and that the tree should be removed.	No
P. Evans	Neutral	The submitter is neither opposed or in favour of the removal of the tree. The submitter notes that the tree is well established and find it visually appealing and satisfying. But it is noted that with the removal of the other trees within the vicinity of the tree, it makes it appear to be a bit "out of shape".	No

		The submitter recommends that if the consent is granted to remove the tree, it should be replaced with more suitable trees or vegetation, and that the applicant offset the tree removed by contributing financially to a community project planting trees (\$1000.00 was considered appropriate).	
Protect Private Ownership of Trees Society (Jim Moffat)	Support	The submitter was in favour of removing the tree as it is not a native tree and will not have any adverse effects on the environment – including any visual effects. The submitter considers that scheduled trees on private property adversely affects private property rights.	Yes
R. Tane	Oppose	The tree is considered to be a significant landmark of the area (and an important link to the cultural history of the area) and the applicant's reason for removal of the tree are not founded as a garage is not a dwelling and does not require specific amounts of sunlight. It is noted that there is ample space on the property already to allow a garage to be built. The submitter also disagrees with the comments related to the health or suitability of the tree as no arborists report have been provided, and there is no evidence that there is any safety risks related to the tree. The submitter recommends declining the application.	No
A. & G. Kenneally	Support	Considers that the tree is very unappealing from a visual perspective as it is old, unbalanced, and dying at the top of the tree and side, and considers it to be unsuitable for this area. They recommend the removal of the tree.	No

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[43] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including-

- a) *Any positive or adverse effect; and*
- b) *Any temporary or permanent effect; and*
- c) *Any past, present, or future effect; and*
- d) *Any cumulative effect which arises over time or in combination with other effects—regardless of the scale, intensity, duration or frequency of the effect, and also includes*
—
- e) *Any potential effect of high probability; and*
- f) *Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

[44] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the assessment of effects of the activity.

- [45] Under the Proposed 2GP, the removal of a scheduled tree that is: dead, in terminal decline or with extreme failure, or subject to a court order for removal is a restricted discretionary activity. In addition, the modification of a scheduled tree is also a restricted discretionary activity, subject to compliance with the 'best arboricultural practice' performance standard.
- [46] The 2GP therefore provides no permitted baseline for any form of work on a scheduled tree or the removal of a scheduled tree, resource consent is still required as a restricted discretionary activity.

Assessment of Effects

- [47] The activity status of the proposal has been deemed a **non-complying activity** overall. While Council's discretion is not limited to certain matters for non-complying activities the Rule 7.8.2.1 of the Proposed 2GP list a number of relevant matters as guidance when assessing the proposed non-complying activity which are listed below.

Relevant objectives and policies (priority considerations)

- 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*
 - x. *removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree (Policy 7.2.1.2).*
- [48] Objective 2.4.1 and Policy 2.4.1.2 of the Strategic Directions section, provide the following matters to consider:
- 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: trees that make a significant contribution to the visual landscape and history of neighbourhoods (Objective 2.4.1(b)).
 - Policy 2.4.1.2 refers to the creation of the schedule on the basis of 'trees that make a significant contribution to the visual and historical landscape and amenity of neighbourhoods and other places' and the STEM criteria used to evaluate their inclusion, and use rules to restrict the removal or modification of these trees.

[49] Accordingly, assessment is made of the following effects of the proposal:

- Risks to personal/ public safety
- Risks to scheduled heritage building or scheduled heritage structure
- Risks to buildings
- Risks to infrastructure and network utilities
- Positive effects on the efficient use of land
- Effects on public benefit

[50] The following parts of this report represent my views on the effects of the proposal, having regard to the application, the submissions, and my visit to the site. Comments by Council's Consultant Arborist and Landscape Architect are contained in Appendix 3.

Condition of the Tree

[51] The Council's Consultant Arborist, Mark Roberts, had undertaken an assessment of the tree at the time of resource consent LUC-2021-213 for works within the dripline of the tree which was approved on 10 May 2021. At that time, Mr Roberts made the following comments:

- (i) *In general, at the time of the visit the tree looked to be in average health and had slightly reduced vigour and vitality compared to what would be normally expected for trees of this species and age (image one)*
- (ii) *The very tip of the tree had reduced foliage and appeared to be in decline. Tip decline like that seen on T499 is often associated with root damage or root related problems. The soil in the general rooting area of the tree appeared undisturbed and the cause of the tip decline was not immediately apparent.*
- (iii) *The main branch unions of the tree appear structurally sound. The tree had good root flair and the root plate appeared to be stable.*
- (iv) *I saw no structural issues to suggest that whole or partial tree failure was imminent or likely in the near future.*
- (v) *There was a relatively large expanse of lawn to the south, and gardens with mature trees to the east. To the west on the other side of an un-sealed driveway, was more lawn and gardens.*
- (vi) *To the north and slightly below the base of the tree is Gladstone Road, where the proposed works are to take place. The existing footpath and road surface represent an impermeable hard surface and I saw nothing to suggest that tree roots had or were compromising these surfaces.*

[52] For this current application, he further noted:

"T499 is at the western end of a row of four Wellingtonia (T493, T501, T500 and T499 – image one). All four trees appear to have been planted at about the same time and in comparison, to those trees T499 is not as evenly foliated or as vigorous.

In the May 4, 2021, report I noted that 'the very tip of the tree had reduced foliage and appeared to be in decline. There was no obvious improvement in overall tree health and/or tip growth when viewed on December 1, 2021 (image two).

Additional observations as of the December site visit;

a) That majority of the trees and shrubbery under the tree and along the front boundary line of 110 Gladstone Road North have been removed, and

b) There was some spring growth visible in the lower canopy”

Effects on safety, property, and infrastructure

[53] Mr Roberts concluded that he is unable to recommend the support of the removal of the Schedule Tree T499 due to the following reasons:

(i) is not required as emergency work to safeguard life or property (15.5.1 of the Operative District Plan),

(ii) is not required because the tree is dead or in terminal decline (proposed District Plan - Policy 7.2.1.1)

(iii) is not required because the tree poses significant risk to personal/public safety or property (proposed District Plan - Policy 7.2.1.2)

(iv) will lead to the death or terminal decline of a scheduled tree (proposed District Plan – Rule 7.3.2.3)

(v) there is no reason why this tree is of greater concern or has a greater chance of interfering with council’s infrastructure in comparison to other Council or privately owned trees in Dunedin

[54] Additionally, the Council’s 3 Waters department has confirmed there has not been any indications to date that the tree roots were adversely affecting the Council’s wastewater and water mains within Gladstone Road North. However, they did note that if the tree were to be felled, the stump of the tree should be not be ripped out as the roots may potentially be intertwined with the Council’s mains and cause damage.

[55] I concur with the conclusions made by Mr Roberts and consider that the Scheduled Tree T499 in its current state does not pose any obvious risks to anyone’s personal safety, public safety, property, or Council’s infrastructure.

Positive Effects

[56] The applicant’s primary reason for seeking the removal of the tree is related to being able to establish a detached garage on the site that receives maximum sunlight access and desire to landscape their site as they wish to. No plans have been provided related to the garage they wish to build on the site. However, it is noted that the front yard area is of sufficient shape and size to be able to accommodate a typical detached double garage and for the applicant to utilise a significant amount of space to landscape the front yard area even with the retention of the Wellingtonia tree. Accordingly, the current layout and location of the tree would not necessarily inhibit the applicant in establishing an additional garage on the site nor to undertake significant landscaping of the area.

[57] It is acknowledged that if the garage were built within the location of the Wellingtonia tree it would be the most ideal in terms of sunlight access. However, it is considered that an alternative location whilst retaining the tree would still most likely enable some sunlight access. As pointed out by the submitter R. Tane, I am also of the view that sunlight access is not a critical element for the use of a garage especially when compared to the use of a habitable space such as a dwelling.

- [58] If the site was restricted in its ability to provide a garage for a dwelling where there is no garage or accessory building due to the location of scheduled tree, the removal of the tree may potentially enable a significant positive effect on the efficient use of land for that particular site. However, as mentioned, there is sufficient area on the site to provide for an additional garage and it is noted the existing dwelling on the site has a three-bay garage on the ground level. Furthermore, the applicant has not demonstrated that the shape and layout of the site and the location of tree ultimately restricts the possibility for any future subdivisions in the future. However, based on the approximately measurements of the front yard area it could still be possible to undertake a subdivision of the site with the retention of the tree, although a new vacant lot towards the front portion of the site may be limited in its buildable area. Hence, it is considered that the removal of the tree does not result in significant positive effects on the efficient use of land.
- [59] With regards to the adverse effects on the sunlight access on the current dwelling on the site, the applicant has not provided any particular sunlight and shading assessment to quantify the shading that the tree causes on the dwelling. It is acknowledged that the tree would result in some shading, however, based on a photo the applicant had provided with the sun behind the tree, it is noted that characteristics of the foliage of the tree still allows for some light to go through the tree and does not completely block out sunlight that may result from more dense vegetation or trees. Additionally, the applicant has removed a significant amount of mature vegetation along the road boundary recently that would seemingly allow for more sunlight access.
- [60] Overall, the proposal removal of the tree would result in some positive effects that would benefit the applicant. However, the removal of the tree will not result in any significant positive effects on the public in general nor will it result in a more significantly positive effect on the efficient use of land.

Effects on Amenity

- [61] The Council's Landscape Architect, Luke McKinlay, has also reviewed the application and the tree during the site visit on the 7 December 2021. Mr McKinlay had provided the following comments:

"Gladstone Road North is in south-eastern Mosgiel. It connects Quarry Road to Puddle Alley, Wingatui. The subject site and neighbouring dwellings on the southern side of Gladstone Road North are zoned Low Density Residential. The land directly opposite the site is zoned rural and is currently in pasture. Residential development occupies the land between Hagart-Alexander Drive and Gladstone Road North, to the west of the site. The Main South Railway Line runs parallel to Gladstone Road North on its northern side.

The tree is approximately 41m high and has a spread of approximately 10m. It is located in the front yard of 110 Gladstone Road North, to the northwest of the applicant's dwelling. Due to its stature and close proximity to the street, T499 is a focal feature of the streetscape from both the western and eastern approaches to the site on Gladstone Road North.

Three neighbouring Wellingtonia are located immediately to the east of the site, which are also on the DCC tree schedule (T493, T500 and T501). Together, these four large, columnar trees form a prominent natural edge to this residential area at the foot of the Chain Hills.

It is noted that several trees that were located near T499 on the applicant's property have been removed since the initial STEM evaluation. Shading caused by these trees

has affected the development of foliage on the northern side of T499. Following the removal of these neighbouring trees it is noticeable that parts of the lower canopy are now somewhat asymmetrical. The very tip of the tree also has some reduced foliage. Whilst these areas of reduced foliage reduce the overall form/symmetry of the tree to a degree, it is considered that, on balance, T499 continues to have a positive influence on the amenity of the surrounding area. Due to the height and age of T499, it is likely that it has become a well-known and highly prominent natural landmark within this neighbourhood. It continues to form a strong natural counterpoint to nearby residential development."

- [62] Mr McKinlay also noted that the STEM assessment undertaken in 2001 is still relevant and that the re-evaluation of this assessment will still result in the same score of 87 for the amenity related matters.
- [63] Furthermore, Mr McKinlay noted that *"the proposed replacement planting of smaller native tree and shrubs would be insufficient to maintain amenity values provided by T499. It is acknowledged that it is very difficult to mitigate for the loss of such a large, prominent tree, however, its replacement with a selection of shrubs/small trees appears of insufficient scale to compensate for the loss of T499."*
- [64] In conclusion, Mr McKinlay notes that the Wellingtonia tree retains its same amenity values as evaluated under the STEM assessment system which resulted in its inclusion in the Scheduled Tree register (under both the former operative district plans and the current Proposed 2GP) and that the tree should have on-going protection.
- [65] It is noted, however, that four submissions were received in support of the removal of the tree and they generally commented on how the tree does not look visually appealing (mainly related to the aforementioned matter regarding the reduced foliage and symmetry of the tree), considered the tree not being suitable within a residential context, and is not a native tree. Overall, the submissions were more in favour of the removal of the tree that is considered to be significant under the Proposed 2GP. However, the one neutral submission and the one submission in support of the application both noted that the tree was visually appealing.
- [66] Hence, it is acknowledged to a certain extent that in relation to assessing the amenity values of a tree it can often be a very subjective matter and dependant on the perception of an individual rather than an objective standard. Therefore, it is considered that the STEM assessment provides some degree of an objective assessment to the amenity aspect of the tree. The context of the site and surroundings of the tree should also be taken into consideration along with the STEM assessment when assessing the amenity values of a tree.
- [67] Three of the submitters that supported the removal of the tree and the one neutral submitter lives within relatively close proximity of the site and would be those who view the tree in more frequent manner on a day-to-day basis. Hence, it is considered that more consideration and weight should be given to the matters raised by these parties when compared to those who do not live within close proximity of the area.
- [68] It is understandable that such a large tree specimen such as this one could be viewed as being overly large and out of context within a typical residential zone. However, large established trees within a residential area do not necessary result in it being considered out of context as there are residential neighbourhoods within Dunedin that would have large established trees within the residential setting. It is noted that the site and its adjoining residential properties are within the Low-Density Residential Zone which are generally characterised by larger sites with larger open space areas, and where a minimum

lot size of 750m² is required. Additionally, the tree is located towards the road boundary and setback moderately from most residential dwellings. The site is also located opposite a Rural Zone and the railway line that provides further separation from the general residential areas and larger open space areas in relation to the tree. Therefore, in this instance, the tree is not considered to be significantly out of context such that it should require removal, especially given there are three other Wellingtonia trees further east of the site that have been well established and provide some form of natural linkage.

- [69] However, it is noted that this particular tree is spaced further apart from the three other Wellingtonia trees that are more evenly spread out (and relatively closer to one another). Additionally, due to the removal of the existing vegetation that was between this tree and the nearest wellingtonia tree there is some sense of the natural linkage between these wellingtonia trees being lost resulting in the subject tree appearing to be somewhat out of place.
- [70] With regards to the loss of foliage of the tree due to the previous mature vegetations on the site, Mr Roberts noted that there were some spring growth on the lower canopy. Hence, there may be some possibilities that the natural form and symmetry could be recovered over time. Nevertheless, the current form of the tree is not necessarily unattractive to view and still provides some amenity values.
- [71] Nevertheless, I generally concur with the comments and conclusions made by Mr McKinlay regarding the amenity values the tree has under the STEM assessment system and that the tree does provide positive amenity values to the site and surroundings. However, after taking into consideration of the matters raised by the applicant and the submitters, it is considered that if this particular tree was removed, any adverse effects on the amenity values of the surrounding area would not be significant. In my opinion the effects of removal on the amenity values will be no more than minor.

Effects Assessment Conclusion

- [72] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal to be no more than minor.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [73] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
- [74] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

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

- [75] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Proposed 2GP were taken into account in assessing the application. As the zoning and relevant rule provisions of the ODP for this site have been superseded by the provisions of the Proposed 2GP, it is considered that there are no objectives and policies of the ODP that are relevant to the proposal that needs to be assessed as part of this assessment.

Proposed 2GP

[76] The following objectives and policies of the Proposed 2GP were considered to be relevant to this application:

Scheduled Trees Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 7.2.1 The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained	As noted in the early sections of this report, the tree is of average health with no obvious indication of being in terminal decline. There are no known risks to personal/public safety, heritage buildings or structures, or buildings in general due to the tree. Neither is the tree causing any adverse effects on Council's infrastructure or network utilities and no concerns were raised in terms of needing to remove the tree in the future to mitigate any potential effects on the infrastructure or network utilities. As summarised in the assessment of effects, the removal of the tree would result in some positive effects that would benefit the applicant. However, the removal of the tree will not result in any significant positive effects on the public in general nor will it result in a more significantly positive effect on the efficient use of land. The site and the available vacant land can still be used in a manner that can achieve 'efficient' use of land, whether it be accommodate an accessory building, landscaping/gardening, or potential future subdivision. Although, it is acknowledged there are limitations on the extent of the use of the area, the location and layout of the tree would not entirely inhibit the use of the land. Overall, it is considered that the removal is not justifiable under the policy framework of the Trees Section of the Proposed 2GP and is considered to be contrary to the relevant objectives and policies.
Policy 7.2.1.1 Enable the removal of a schedule 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: • 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; • the tree poses a substantial risk to a scheduled heritage building or structure; • there is a moderate to significant risk to buildings; • the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities; or • removal of the tree will result in significant positive effects in respect of the efficient use of land. X. removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree.	

Strategic Directions Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 2.4.1: Form and structure of the environment:	The Wellingtonia tree has been assessed as having a contribution to the visual landscape of this area and will likely become a well-known and highly prominent natural

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: trees that make a significant contribution to the visual landscape and history of neighbourhoods.	landmark within this neighbourhood due to its age and height. Removing the tree would therefore be generally inconsistent with this objective as this is an element of the environment which contributes to residents' and visitors' aesthetic appreciation for and enjoyment of the area and this would not be protected.
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Overall Objectives and Policies Assessment

- [77] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is contrary with those provisions.

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

- [78] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Partially Operative Otago Regional Policy Statement 2019 (RPS) was approved and made operative on 15 March 2021. It is considered that the provisions of the RPS does not have any direct relevance to the proposal.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [79] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104D

- [80] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [81] Only one of the two tests outlined by Section 104D need be met for Council to be able to assess the application under Section 104 of the Act. For an activity to be contrary to the objectives and policies of the relevant plan, the proposal will need to be considered to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established.
- [82] It is noted that in this instance, the proposal is assessed as being contrary to the key objectives and policies of the Proposed 2GP. However, the adverse effects of the proposal have been assessed as to be no more than minor. Accordingly, the proposal has passed at least one of the limbs of the 'gateway test'. Therefore, the Council can exercise its discretion under section 104D to grant consent.

Section 104

- [83] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the

proposed development overall will be minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.

- [84] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [85] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be contrary with the key objectives and policies relating to the Proposed 2GP.
- [86] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the objectives and policies of the RPS has no direct relevance to the proposal.

Other Matters

- [87] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [88] Case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set, and the integrity of the District Plan may be undermined.
- [89] Based on the information available, I do not believe there is any supporting evidence to suggest that this proposal is considered to be a 'true exception'. I do consider that the proposed activity represents a challenge to the integrity of the Proposed 2GP. The Proposed 2GP is very prescriptive around when the removal of a scheduled tree is appropriate and provides a non-complying activity status for removal. The current application has been assessed as not meeting any of the criteria for when removal is appropriate under the Proposed 2GP and thus its removal, in contravention of this clear criteria, would undermine the integrity of this plan.
- [90] The Committee needs to be aware of the potential for an undesirable precedent to be set in this regard.

CONCLUSION

- [91] The policy framework for Scheduled Trees under the Proposed 2GP is worded in a very rigid manner and uses the term 'avoid removing a scheduled tree' unless it meets at least one of the specific criteria listed. The proposal does not meet any of the specific criteria listed within the policy, hence, the reasons to remove the tree are not justified under the current policy wording of the Proposed 2GP.
- [92] In particular, the proposed removal of the tree will not result in significant positive effects on the efficient use of land. Although it is recognised that the tree does pose some limitations on the use of the site, the current layout and size of the site would still enable further uses of the land in the future, including providing for an accessory building, landscaping/ gardening, or potential subdivision in the future.
- [93] Based on case law, the use of 'avoid' within a policy can be interpreted as to mean 'not allow'. Hence, it is considered that the proposed application to remove the tree should be declined. Otherwise, allowing the removal of the scheduled tree could result in a

significant undesirable precedent being set for future scheduled tree removal applications and undermine the integrity of the Proposed 2GP.

[94] Having regard to the above assessment, **I recommend that the application as submitted to remove the tree be declined.**

[95] If the Committee are of the view that consent may be granted for the alternative of pruning the tree within the scope of the present application, I recommend that the conditions set out below be included.

RECOMMENDATION

[96] That the application to remove the tree be **declined**.

[97] Were consent to remove the tree be granted, the following conditions should be included.

Conditions:

1. *The proposed activity must be undertaken in general accordance with the information provided with the resource consent application received by the Council on 19 November 2021, and further information received on 20 January 2022, except where modified by the following conditions.*

Landscaping

2. *A detailed landscaping plan prepared by a suitably qualified person must be submitted to rcmonitoring@dcc.govt.nz for review and approval by the Council's Resource Consent Manager or nominee prior to the removal of the tree. The landscaping plan must ensure suitable replacement planting/ vegetation is provided along the site frontage that will increase the amenity of the streetscape. The landscaping plan must detail the following matters:*
 - a) *Illustrate the proposed planting;*
 - b) *The proposed plant spacing/density, species of plants;*
 - c) *The size of the plant at the time of planting and the mature height of the plants;*
3. *The approved landscaping plan must be implemented within six (6) months after the removal of the tree, and thereafter maintained by the consent holder. Evidence of the completed landscaping must be provided to rcmonitoring@dcc.govt.nz within 10 days after the completion of the planting.*

REASONS FOR RECOMMENDATION

[98] The tree is in a relatively healthy condition with no clear evidence of being in terminal decline nor any evidence which suggests there are risks to personal/ public safety, property, or infrastructure.

[99] The proposal is considered to be contrary to the key objectives and policies of the Proposed 2GP.

[100] The proposal to remove the tree is not considered to be a case where it is a true exception.

[101] The removal of the tree based on the circumstances as discussed in the application and in this report would potentially set an undesirable precedent for any future scheduled tree removal applications and undermine the integrity of the Proposed 2GP.

Report prepared by:



Caleb Park
Planner

12 May 2022
Date

Report checked by:



Phil Marshall
Senior Planner

12 May 2022
Date