
TO: Hearings Commissioner

FROM: Robert Buxton

DATE: 12 March 2021

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2020-524
61 Wallace Street, Dunedin

Applicant: **A S Munro (as trustee of the Dunottar Trust)**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 12 March 2021. The purpose of the report is to provide a framework for the Commissioner's consideration of the application and the Commissioner is not bound by any comments made within the report. The Commissioner 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 [110] to [113], I have concluded that the proposal should be granted consent. The proposed removal of tree T1176 has been assessed as likely to give rise to adverse effects that are no more than minor, and it is not anticipated that these effects can be avoided or remedied with any certainty due to the advanced decline in the health of the tree. It is considered that remedial works would not have a high likelihood of success and therefore would not achieve an outcome that restores the public value of the trees. I consider the proposal is not contrary to the relevant objectives and policies of both the Dunedin City District Plan 2006 (referred to in this report as the "2006 District Plan") and the Proposed Second - Generation District Plan (referred to hereafter as the "Proposed 2GP").

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to remove a protected tree, T1176. The duration of the activity is estimated to be 2 – 3 days. The tree is a copper beech (*Fagus sylvatica*) which is listed in Appendix A1.3 Schedule of Trees in the Proposed 2GP and in Schedule 25.3 of the 2006 District Plan. The tree is located on the front of the site, in the north-eastern quadrant close to the boundary with 63 Wallace Street. There is a dwelling located to the rear of the site and the driveway to this building follows the south-western side boundary.
- [4] The information provided by the applicant states that:
- "A general decline has been observed now for at least five years, particularly noticeable in the lower aspects of the tree's crown. This spring, 2020, new growth has largely been absent and T1176 is considered to be in terminal decline."

- That with the removal of the unprotected English beech in 2018 (which had a split trunk and showed signs of disease) which sat approximately 10 metres to the north west of T1176 straddling the boundary between numbers 61 and 63 Wallace Street, a pronounced asymmetry of T1176's crown has been highlighted. Also, that at the time of removal of the English beech both trees "...were in full leaf and a noticeable reduced vitality was observed in both trees."
- [5] Council's consultant arborist, Mr Roberts from Roberts Consulting Ltd carried out an assessment of the condition of tree in using the Standard Tree Evaluation Method (STEM) dated January 26th 2021 which is canvassed in paragraphs [56] to [60] and in summary:
- This tree has an infrequent occurrence and has most likely been planted at or about the time of the house being built in 1905.
 - The tree has an asymmetrical canopy and the distribution of foliage is uneven.
 - The tree is in decline and has been in decline for a number of years.
 - The direct ecosystem and human services are reduced due to the proximity to the town-belt and further reduced due to the tree's relatively poor health.
- [6] Mr Luke McKinlay, Council's Landscape Architect, has provided expert advice on the application in relation to the amenity effects of the proposal and has provided a reassessment of the amenity section of the STEM evaluation which is canvassed in paragraphs [61] to [68]. The STEM assessment scores show that the tree's decline has adversely affected its amenity value.
- [7] A copy of the application, and the arborist and landscape architect reports, are contained in Appendices 1 and 3 of this report.

DESCRIPTION OF SITE AND LOCATION

- [8] 61 Wallace Street is a 1902 m² site located near the northern, no through road end of Wallace Street. Residential development and the Pacific Park Motel occupy the western side of Wallace Street and the town belt occupies the eastern side. The surrounding area of Maori Hill to the north, south and west is largely residential. Most residential sections in this area are occupied by one or two storey stand-alone dwellings, some of which are substantial and located on generously proposed sections. Multi-unit developments are less common. A wide range of architectural styles are represented. Front boundary treatments are varied, including commonly timber or masonry fences and hedges. There are no street trees on Wallace Street, however there are several mature trees in the front yards of properties that are visible from surrounding public locations, including a scheduled copper beech at 55 Wallace Street (T1175). The dense bush of the town belt lines the eastern side of Wallace Street, which contributes to the "green", well-vegetated character of this street.
- [9] The Copper Beech tree occupies a location near the northern boundary of this site with part of the canopy overhanging the neighbouring property to the north, 63 Wallace Street.
- [10] The site is legally described as PT SEC 7 BLK I SO 14194 UPPER KAIKORAI SD held in Register of Title 184/29.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [11] The applicant has lived at the site since 1994.
- [12] There are records of tree applications for maintenance having been applied for in 2014 (LUC-2014-636) and 2018 (LUC-2018-201).

2001 STEM ASSESSMENT T1176

- [13] T1176 received a total STEM score of 162 points when assessed via the STEM method (see below) on 6 June 2001. The condition evaluation scored 87 and the amenity evaluation section scored 75 points.
- [14] In the condition evaluation, the highest score was attributed to both Age and Form (21 points), while occurrence, vigour & vitality and function scored 15 points each.
- [15] In the amenity evaluation, the highest scores were attributed to stature and proximity at 21 points each, being in the 21-26m height bracket and being part of a 3+ group. Role and climate were both awarded 15 points and visibility scored 3 points. A copy of this STEM assessment is attached in Appendix 4 of this report.

2GP AUDIT OF SCHEDULED TREES 2013/2014

- [16] During the District Plan review, most of the significant trees were surveyed again in 2013-2014 by a Council Landscape Architect and a Council Arborist, to see if the trees were worthy of continued inclusion into the 2GP's 'schedule' of significant trees (Appendix A1.3). The assessment of the tree determined that it warranted specific protection under both the operative and proposed district plans. However, the STEM assessment was not undertaken in 2013, and the 'assessment' was more akin to an inventory. A photograph of the subject tree is in Council's records from the Proposed 2GP 'audit', and is attached as Appendix 4 of this report.

HISTORY OF WORKS

- [17] LUC-2014-636 was an instant consent issued by Council's Parks Officer -Trees that allowed crown raising of T1176.
- [18] LUC-2018-201 was consented on 16 May 2018 for minor tree work on T1176, for crown cleaning and crown reduction with no more than 20% of the live crown removed. An assessment of the tree's condition was undertaken on 7 May 2018 by Council's consultant arborist, Mr Roberts of Roberts Consulting, who advised Council staff that:
- In general, at the time of the assessment, the tree looked to be in good health and have vitality within the normal range for the species and age.
 - The tree had a relatively un-symmetrical canopy most likely due to the presence of a tree or trees growing in close proximity which have now been removed.
 - The tree is deciduous and had very few leaves, which was to be expected for the time of year.
 - The tree has had pruning work undertaken in the past which appears to have been carried out in accordance with industry accepted pruning standards
 - The tree had good trunk taper and root flare, and the root plate appeared to be stable.
 - Overall, the tree appeared to free from obvious defects that suggest imminent failure.
 - The powerline clearance as noted in the application relate to service line leading to number 63 Wallace Street. A service line is an electrical line branching off an electrical distribution line to supply electricity to one or a few selects buildings.

Mr Roberts also made the comment that he believes that the tree is incorrectly identified on Schedule 25.3 and should be recorded as *Fagus sylvatica* 'purpurea' (rather than *Fagus sylvatica* 'riversii').

ACTIVITY STATUS

Background to STEM Analysis

[19] The restriction on removal or pruning of trees is limited to a specific list of trees included as schedule A1.3 in the Proposed 2GP. Most but not all of the trees are listed in Schedule 25.3 of the 2006 District Plan. All trees now listed in the Proposed 2GP have been assessed using the Standard Tree Evaluation Method (STEM) when first included for protection in the 2006 District Plan, in most cases within Schedule 25.3. T1176 is listed, for protection, in both Plan Schedules. 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 the 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 regards to its notability, points may be allocated for recognition factors such as 'feature', 'association', 'commemoration', 'remnant' and 'rarity'. The STEM evaluations undertaken for the Council often do not include a score for notability, as consideration of this element is generally applied where specific circumstances are identified that warrant the addition of further points being assigned to the overall score.

[21] The points received for each factor are totalled. Any tree that is allocated a sum total of **147** points or more has been considered by the Council to be 'significant' and generally worthy of inclusion in the District Plan Schedule of Trees.

District Plan Status

- [22] Dunedin currently has two district plans: the 2006 Dunedin City District Plan, and 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.
- [23] 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.
- [24] The Proposed 2GP was notified on 26 September 2015 and given legal effect on 7 November 2018. 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.

OPERATIVE DISTRICT PLAN (2006 District Plan)

- [25] The subject site is zoned **Residential 1** in the 2006 District Plan. Wallace Street is classified as a **Local Road**. For context, the site lies opposite the Dunedin Town Belt which is also zoned Residential 1 and lies within the Urban Landscape Conservation Area 01 (Dunedin Town Belt).
- [26] Rule 15.5.1(i) of the Trees Section of the 2006 District Plan, states that 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 is a **Discretionary Activity** (unrestricted).
- [27] Exemptions to this rule listed in Rule 15.5.1(i)(a) to (c) are not applicable to the application but are discussed below under the section titled 'permitted baseline'.
- [28] As such, the removal of this tree is a **Discretionary Activity** pursuant to Rule 15.5.1(i) of the 2006 District Plan and consequently resource consent is required.

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

- [29] The Proposed 2GP zoning maps show the subject site is zoned as General Residential 1 but it is now subject to Variation 2 under which it is proposed to rezone it as General Residential 2 - a medium density zone. Wallace Street is classified as a Local Road. For context, the site lies opposite the Dunedin Town Belt which is zoned Recreation and lies with the Urban Biodiversity Mapped Area UBMA01 and an Area of Significant Biodiversity Area (C143).
- [30] Rule 7.3.2.3 of the activity status table of the Scheduled Trees Section states 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 a **Non-complying** activity. This rule is designed to protect trees from being removed where they are in a healthy condition or any decline has not reached the terminal stage. The advice from Mr Roberts is that the tree at 61 Wallace Street is in decline, but at this point in time there remains some scope for remedial work to halt or reverse this decline.
- [31] Rule 7.3.2.1 of the activity status table states that 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. Based upon the assessment of Mr Roberts, the state of the tree is almost at a point where this rule would apply. The assessment by Mr Roberts indicates that the tree has been declining for several years and without intervention this decline will be terminal. There are remedial works that could be undertaken but in his opinion these would not have a high likelihood of success.

- [32] Rule 7.3.2.3 has been appealed under ENV-2018-CHC-270 by the University of Otago and as such is not yet fully operative. It is noted that the relevant appeal seeks for activities that breach this standard to be assessed as Discretionary Activities, rather than Non-complying.

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

- [33] 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.
- [34] Given the residential dwelling was erected around 1905 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.

Overall Status

- [35] Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.
- [36] In this case, under the 2006 District Plan the removal of the trees is a **Discretionary Activity** (Unrestricted) in accordance with Rule 15.5.1 (i). Under the Proposed 2GP, based on Mr Roberts's assessment, the proposal is considered to be a **Non-Complying Activity** in accordance with Rule 7.3.2.3. When two different activity statuses apply, the more restrictive of the two rules will apply. Consequently, resource consent is required as a **Non-Complying activity**.

NOTIFICATION AND SUBMISSIONS

- [37] No written approvals were submitted with the application.
- [38] The application was publicly notified in the Otago Daily Times on **7th December 2020**.
- [39] Copies of the application were available on the Dunedin City Council website. Submissions closed on the **27th January 2021**.
- [40] **Three** valid submissions were received by the close of the submission period and all of the submissions were in support.
- [41] 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?
Murray Morgan 59 Wallace Street, Dunedin	Support	Happy for tree to be removed – no reason/s given.	No
Gavin Turner 55 Wallace Street, Dunedin	Support	Tree in ill health and adversely affects neighbourhood causing significant shading and possible damage by roots. Questions whether trees of this stature belong on residential site. Also, that tree should be immediately removed due to danger it poses.	No
James Melville Chisholm Moffat (Secretary of Protect Private Ownership of Property Society (POTS))	Support	Tree past “use by date”. Provides hardly any visual value to people in surrounding area. If allowed to grow it will be an unfair cost to A S Munro. Remove to provide mental and financial relief to AS Munro, a ratepayer.	Yes

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[42] 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

[43] 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 effects of assessment of the activity.

[44] The removal, modification, pruning, trimming or activity within the canopy spread of any tree listed in Schedule 25.3 is a **Discretionary Activity** in the 2006 District Plan. There are three exceptions to this activity status, which are as follows:

- Where the work amounts only to minor trimming and maintenance and is undertaken by hand-operated pruning shears or secateurs in accordance with accepted arboricultural practice;
- The work is required as emergency work to safeguard life or property and is carried out by the Council or a statutory authority.
- The tree or trees are subject to an order for removal or modification in terms of Section 129(C)5(a), (b), and (c) of the Property Law Act 1952.

- [45] None of these listed exemptions to a discretionary activity status apply to the current situation. In the absence of a court order or any evidence of an emergency/ imminent risk of danger, there is no permitted baseline under the 2006 District Plan for the removal of a scheduled tree. Council's consultant arborist, Mr Roberts, has indicated in email correspondence dated 18 November 2020 to council staff that the tree poses no imminent risk to life or property and its immediate removal is not necessary.
- [46] The effects pertaining to the 'minor trimming and maintenance undertaken by hand operated pruning shears or secateurs in accordance with accepted arboricultural practice' could be considered permitted in terms of the 2006 District Plan, as per the above exemption. The effect of modification is considered to have limited relevance to the present application, which is to remove the tree entirely.
- [47] In terms of 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 the 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.
- [48] The Proposed 2GP therefore provides no permitted baseline for any form of work on a scheduled tree or the removal of a scheduled tree as even in the case of a court order or emergency situation, resource consent is still required as a restricted discretionary activity.
- [49] Overall, therefore, there is no permitted baseline.
- [50] For completeness it is noted that Council's consultant arborist, Mr Roberts, advises that there is evidence of ongoing decline of the tree. This is despite efforts to maintain the tree as shown by the record of consents for maintenance work.
- [51] The existing and reasonably foreseeable environment consists of a residential area in a non-through road section of Wallace Street in close proximity to the Dunedin Town Belt which contains native and exotic vegetation. It is noted that Variation 2 if it proceeds will increase the density of residential development.

Assessment of Effects

- [52] 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, both District Plans list a number of relevant assessment matters provided below.

2006 District Plan

- [53] The assessment of effects is guided by Section 15.6 (Trees) of the 2006 District Plan. Accordingly, assessment is made of the following effects of the proposal:
- Effect of modification (Assessment Matter 15.6.1)
 - Reasons and alternatives (Assessment Matter 15.6.2)
 - Amenity Values (Assessment Matter 15.6.3)

Proposed 2GP

[54] The assessment of effects is guided by Rule 7.8.2.1(c) of the Proposed 2GP which seeks to avoid the removal of a scheduled tree unless certain effects are established (which reflects Policy 7.2.1.2 under Objective 2.4.1). Accordingly, assessment is made of the following applicable effects of the proposal:

- There is significant risk to personal/public safety or 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 scheduled heritage 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.

[55] In addition, the assessment criteria include reference to Objective 7.2.1 which seeks that the contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained; and Objective 2.4.1 and Policy 2.4.1.2 of the Strategic Directions section, which seek:

- 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)).
- 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' based upon STEM criteria and any potential adverse effects, and use rules to restrict removal or modification. (Policy 2.4.1.2).

Effect of Modification, Condition and Amenity Values (including STEM assessment) (Assessment Matters 15.6.1 and 15.6.3 of 2006 District Plan and Policy 2.4.1.2 of Proposed 2GP)

Condition of the tree

[56] Council's Consultant Arborist, Mr Roberts, visited the site on November 13th 2020, and has provided a reassessment of the condition of the tree in terms of the STEM evaluation methodology, as follows: Form: 9 ('Moderate'), Occurrence: 15 ('Infrequent'), Vigour & Vitality: 9 ('Some'), Function: 3 ('Minor') and Age: 27 ('100 years+'). Mr Robert's subtotal for the condition assessment is 63 points, which is the lower than the subtotal of the Council's 2001 assessment which was 87 points.

[57] In terms of form the tree was assessed as having an asymmetrical canopy and an uneven distribution of foliage, although the proportion of trunk to canopy (the crown to trunk ratio) is close to ideal. Based on the 2013 aerial photograph provided by the applicant, Mr Roberts notes that "...the tree was never symmetrical due to the proximity and growth restrictions created by an adjacent and now removed beech tree. As a stand-alone tree, it is unlikely that tree ever had a 'very good' form."

- [58] With regard to vigour and vitality, "The tree is in decline and has been in decline for a number of years. There is reduced growth at the extremities and no substantial internal canopy. There was evidence that some response and wound closure growth was occurring which indicates some vigour remains."
- [59] In reference to function, "The direct eco-system and human services are reduced due to the tree's proximity to the town-belt and further reduced due to the tree's relatively poor health."
- [60] In email correspondence to council staff dated 18 November Mr Roberts has also noted that "...the pattern of decline did not suggest a single or intentional cause was likely, the surrounding plants and foliage were healthy, the soil undisturbed and soil levels unchanged. There were some signs of secondary damage as a result of the removal of an adjacent beech back in 2018 but in my opinion, this damage was not substantial enough to be the underlying cause of decline."

Amenity of the tree

- [61] Council's Landscape Architect, Mr McKinlay, visited the site on 20th January 2021 to determine the effect of its removal on the existing visual and landscape amenity values, and has provided a reassessment of the amenity values of the tree in terms of the STEM evaluation methodology.
- [62] In terms of the STEM assessment Mr McKinlay considered the amenity value of the tree had dropped to 57 points from 87 points.
- [63] In the STEM amenity evaluation, the highest scores were attributed to stature and proximity at 21 points each (as per the 2001 STEM), being in the 21-26m height bracket and being part of a 3+ group. Role and climate were both awarded 9 points (reduced from 15 points in the 2001 STEM). Visibility at 0.5 km was awarded 3 points (as per the 2001 STEM). The role criteria relates to a tree's amenity value in a setting or as part of a composition. The role of the tree is now assessed as moderate. The climatic influence criteria are related to a trees ability to ameliorate climate, predominantly in the form of shade, shelter and temperature control. The climatic influence of this tree is now assessed as minor.
- [64] In term of broader amenity values Mr McKinlay states that the obvious decline of the tree negatively affects its amenity value (the healthy Copper Beech at 55 Wallace Street (T1175) provides a good example of a healthy specimen of this species). If the trees canopy continues to thin it is likely that the tree will be perceived negatively due to its poor state of health becoming more obvious. Further the tree will not form a positive natural counterpoint to built development in the suburb, nor provide useful climate amelioration.
- [65] He states that the removal of the tree will not reveal an undesirable view. Whilst it softens views of the dwelling at 61 Wallace Street and neighbouring dwellings, it does not currently provide a visual screening function.
- [66] He notes that the removal of the subject tree will not leave this area devoid of large trees or greenery. He also notes that although there are no street trees there are several well-established/mature trees in the front yards of properties (including T1175 at 55 Wallace Street) which contribute positively to the amenity of the neighbourhood; and the trees of the town belt which lies on the eastern side of Wallace Street contribute to the amenity of the surrounding area and are a natural counterpoint to nearby residential development.

- [67] Mr. McKinlay concludes that “the proposed removal of T1176 will have low adverse effects on the broader amenity values of the surrounding streetscape. The decline of this tree has become obvious and the consultant arborist is of the opinion that recovery is unlikely. Given this diagnosis, amenity values associated with this tree will likely continue to decline.” Also that “Based on the combined amenity and condition re-assessment scores provided by myself and the consultant arborist, this tree no longer reaches the pass score of the STEM assessment.”
- [68] The submission from Mr Turner has raised the shading effects of the tree, although I note the effects of the tree are established and longstanding.

Remedial works

- [69] Mr Roberts provided the following initial comments on this proposal to remove the tree in his email correspondence of 18th November 2020. His comments address whether remedial work is realistic or practical and whether the trees are beyond recovery. He reaches the following conclusions/recommendations:
- Remedial work would not have a high likelihood of success and therefore any actions or recommendations would need to be given on that understanding the tree may not recover,
 - While the tree could possibly recover, it is unlikely.

Reasons and alternatives, risk to personal/public safety, risk to buildings, infrastructure, positive effects (Assessment Matter 15.6.2 of 2006 District Plan, and Rule 7.8.2(1)(c) of the Proposed 2GP)

Reasons and alternatives

- [70] This section relates to the 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.
- [71] The reasons for the removal of the tree have been well canvassed. In particular as noted earlier in the report Mr Roberts email correspondence to Council staff states that while there is a possible course of remediation for the tree it “...would not have a high likelihood of success.” Also in his view “There are insufficient arboricultural grounds to decline this application and it is recommended that the Council approve the application to remove.”

Health and safety risk

- [72] Mr Roberts has advised in email correspondence that in terms of ‘Emergency Works’ the risk posed to people and property is currently low and the likelihood of failure is not imminent. He does, however, recommend that the tree is removed sooner rather than later (within the next 6 to 12 months) as costs and associated risks with removing a dead tree are disproportionately high compared to removing a live tree.
- [73] Mr Turner has submitted that the tree should be immediately removed due to danger it poses.
- [74] I adopt Mr Roberts expert assessment that the tree should be removed within the next 6 to 12 months.

Risk to buildings

- [75] As mentioned in the above section, I adopt Mr Roberts expert assessment that the risk to property is low but that the tree should be removed within the next 6 to 12 months.
- [76] It is noted that Mr Turner's submission raises as an issue possible damage caused by the tree's roots although no evidence has been submitted. I note the effects of the tree are established and longstanding.

Effects on Infrastructure

- [77] Council's water and waste services map shows the known location of all the Dunedin City Council managed water, stormwater and wastewater reticulation networks. It shows no such public infrastructure (existing or works in progress) in the vicinity of the tree.
- [78] I note that in 2018 Mr Roberts in his condition assessment for LUC-2018-201 commented that there is a power service line leading to number 63 Wallace Street and that clearance was required from that line. This clearance has been managed by pruning. Should consent be granted for removal of the tree then an advice note that the consent holder should contact the electricity supplier with regard to its safety protocol should be placed on the consent.

Removal of the tree will result in significant positive effects in terms of efficient use of land

- [79] The proposed removal of the significant tree would potentially result in some positive outcome in terms of amenity effects on the property and adjacent properties but is not necessitated by 'efficient use of land'.

Other

Cumulative Effects

- [80] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

"... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".

- [81] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [82] The proposed removal of the tree is unlikely to have significant cumulative adverse effects. In the context of the immediate environment, the loss of one tree, which is now assessed as not meeting the threshold to be considered a significant tree, is not considered to combine with the loss of other vegetation in the area and result in cumulative adverse effects. The retention of vegetation in this residential community is probably higher given that residences and their gardens in this area are well established and that the Dunedin Town Belt lies opposite. It is also pertinent to note that each scheduled tree is required to go through this same robust framework of resource consent and potentially a notified hearing to be removed. It is therefore considered that the

cumulative adverse effects of the loss of the tree on the 'green' amenity of the city are no more than minor.

Effects Assessment Conclusion

- [83] After considering the likely effects of this proposal above, overall, I consider the adverse effects of the proposal to remove the tree to be no more than minor. The tree's condition and amenity contribution have reduced since its 2001 STEM assessment and now would not meet the threshold for inclusion in the District Plan Schedule. While there is a possible course of remediation for the tree, according to Council's consultant arborist Mr Roberts, it "...would not have a high likelihood of success."

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [84] 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.
- [85] 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))

- [86] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the 2006 District Plan and the Proposed 2GP were taken into account in assessing the application.

2006 District Plan

- [87] The following objectives and policies of the 2006 District Plan were considered to be relevant to this application:
- [88] Trees Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 15.2.1 Maintain and enhance the amenity and environmental quality of the City by encouraging the conservation and planting of trees.	The removal of a scheduled tree is inconsistent with this objective but given the continuing decline of T1176, the proposal is not contrary to this objective.
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.	The owner has maintained the tree in accordance with good arboriculture practise as shown by the consents issued in 2014 and 2018 with the aim of conservation of the tree. Unfortunately, due to the declining health of the tree it no longer would meet the threshold under the STEM methodology for inclusion as a scheduled tree; and it is considered remedial works would not have a high likelihood of success.
Objective 15.2.2 Protect Dunedin's most significant trees	The proposal is inconsistent with this objective and policy in that the tree is scheduled but given the continuing decline of the tree the proposal is not contrary to them. The original identification of the tree's contribution and significance to the area has been maintained until fairly recently. Unfortunately, due to its declining health its ability to significantly contribute to amenity and
Policy 15.3.2	

Identify and protect trees that make a significant contribution towards amenity and environmental quality.	environmental quality is diminishing and this contribution cannot realistically be maintained in the long term. The tree now would not meet the threshold under the STEM methodology for inclusion as a scheduled (significant) tree and it is considered remedial works would not have a high likelihood of success.
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Sustainability Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	The removal of a scheduled tree is inconsistent with this objective and policy but given the continuing decline of T1176 the proposal is not contrary to them.
Policy 4.3.1 Maintain and enhance amenity values.	The owner has maintained the tree in accordance with good arboriculture practise as shown by the consents issued in 2014 and 2018 with the aim of conservation of the tree. Unfortunately due to the declining health of the tree it no longer would meet the threshold under the STEM methodology for inclusion as a scheduled tree; and it is considered remedial works would not have a high likelihood of success.

Proposed 2GP

[89] The following Proposed 2GP objectives and policies 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	The proposal is inconsistent with this objective as the loss of the tree visually and historically will have an impact but given the continuing decline of the tree the proposal is not contrary to it. Given the decline of the tree this contribution cannot realistically be maintained in the long term.
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 7.2.1.1 is not considered to be relevant given that council's consultant arborist confirmed that there is potential for intervention. The proposal is considered to be inconsistent with Policy 7.2.1.2 as the assessment of effects section in this report, show that none of the matters in this policy are met.
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.	
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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 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.	The proposal is inconsistent with this objective but given the continuing decline of the tree the proposal is not contrary to it. The original identification of the tree's contribution and significance to the area has been maintained until recently. Unfortunately, due to its declining health its ability to significantly contribute to amenity and environmental quality is diminishing. The tree now would not meet the threshold under the STEM methodology for inclusion as a scheduled (significant) tree and it is considered remedial works would not have a high likelihood of success. The proposal is consistent with Policy 2.4.1.2 as it is being processed under the relevant provisions.
Policy 2.4.1.2 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' based upon STEM criteria and any potential adverse effects, and use of rules to restrict removal or modification.	

Overall Objectives and Policies Assessment

- [90] The above assessment of the specific relevant objectives and policies of the 2006 District Plan and Proposed 2GP demonstrates that, overall, there is a degree of conflict with the objectives and policies of the 2006 District Plan and the Proposed 2GP. However, the proposal is not considered contrary to the objectives and policies when the present condition of the tree is taken into account, and the limited prospects for remedial work to save the tree.
- [91] The activity status of the proposal in the Proposed 2GP is non-complying. The Proposed 2GP rules are not operative in this instance because there has been an appeal on the activity status of the removal of significant trees (as well as the key policy providing the framework for this rule). Given that the rules are not yet fully operative, the objectives and policies relevant to the tree removal in the Proposed 2GP are given reduced weight.
- [92] Under the policy framework of the 2006 District Plan, where trees make a significant contribution towards amenity and environmental quality, they are considered to be significant and their protection is warranted. In this case, despite maintenance, the tree is in declining health and the most recent STEM assessment reflects this. It is considered remedial works would not have a high likelihood of success.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [93] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the 2006 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

- [94] 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.
- [95] Overall, I consider that the actual and potential effects associated with the proposed development will be no more than minor and therefore the first 'gateway' test of Section 104D is met. Only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104 of the Act.
- [96] In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of both the 2006 District Plan and the Proposed 2GP. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan. This is not the case. The proposed activity is therefore considered to pass the second 'gateway' test outlined by Section 104D.
- [97] It is appropriate for the Commissioner to undertake a full assessment of the application in accordance with Section 104 of the Act.

Section 104

- [98] 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 removal will be no more than minor on the overall amenity values of the area.
- [99] The tree has lost much of the value that once warranted its inclusion in the District Plans, and given the low probability intervention will succeed, it is likely that the tree will soon be in terminal decline, if it is not already at that stage.
- [100] 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. In this case no offsetting or compensation measures have been proposed or agreed to by the applicant.
- [101] Section 104 (1)(b)(ii) of the Act requires consideration of any relevant National Policy Statement. There are none applicable to the circumstances of the application.
- [102] 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. It has been superseded in part by the Partially Operative Regional Policy Statement (PORPS) for Otago which was made partially operative on 14 January 2019. The operative RPS remains in partial effect until the proposed RPS is fully operative. Given its regional focus, the Otago regional policy statement does not have a significant influence

or relevance to this application. Also given the Proposed 2GP was prepared and decisions were made on submissions having regard to the proposed RPS, it is considered that the 2GP objectives and policies have adequately addressed this higher document.

- [103] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. The conclusion of this report there is a degree of inconsistency with the 2006 District Plan and the Proposed 2GP objectives and policies. However, the proposal is not so repugnant with any provision so as to be considered contrary to it when the present condition of the tree is taken into account, and the limited prospects for remedial work to save the tree.

Other Matters

- [104] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. For a non-complying activity, this includes the matter of precedent effects, and the integrity of the District plan provisions.
- [105] 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. Given the declining state of T1176 I consider the granting of consent to this application is unlikely to give rise to any undesirable precedent for other applications to remove trees.
- [106] It is pertinent to note that the removal of any scheduled tree is required to go through this same robust framework of resource consent, and potentially a notified consent process and hearing depending on the circumstances of the tree. The circumstances of each such application can be expected to be different. I consider that the proposed activity does not represent a challenge to the integrity of either the 2006 District Plan or the Proposed 2GP.

CONCLUSION

- [107] Having regard to the above assessment, I have concluded that the application should be granted to allow the removal of the scheduled tree T1176 at 61 Wallace Street. This conclusion has been made based on Council's consultant arborist Mr Roberts assessment and advice, and the assessment and advice of Council's landscape architect, Mr McKinley. In particular, Mr Roberts has stated that the tree is in a state of decline and has been for some time and that whilst it is possible remedial work could give the tree a chance of recovery, it is considered that these works would not have a high likelihood of success.

RECOMMENDATION

- [108] That the application to remove tree T1176 be granted.
- [109] That the conditions set out in Appendix 5 be adhered too.

REASONS FOR RECOMMENDATION

- [110] The proposed development has been assessed as likely to give rise to adverse effects that are no more than minor, and it is not anticipated that these effects can be avoided or remedied with any certainty due to the advanced decline in the health of the tree. It is

considered that remedial works would not have a high likelihood of success and therefore would not achieve an outcome that restores the public value of the trees.

- [111] I consider the proposal is not contrary to the relevant objectives and policies of both the Dunedin City District Plan and the Proposed 2GP.
- [112] I consider the proposal is consistent with the objectives and policies of the Regional Policy Statement for Otago.
- [113] Overall, I consider that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Report prepared by:



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12 March 2021

Date

Report checked by:



Campbell Thomson
Senior Planner

12 March 2021

Date