
Applicant:	Adam and Anna O’Bryne
Location:	33 Preston Crescent, Dunedin
Application Number:	LUC-2024-460
Subject:	Circulation of Evidence and Request for Right of Reply
Date:	22 July 2025

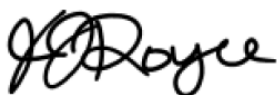
For all parties to the application:

Please find attached the further information provided by the applicant on 4 July 2025 and the Council Planner’s response dated 18 July 2025.

The applicant is now invited to submit their right of reply.

Timetable

- 1) The applicant must submit their right of reply by **5pm** on **29 July 2025** or alternatively confirm that they do not wish to submit a right of reply.



Kirstyn Royce
Chair of Hearings Committee

**BEFORE THE HEARING PANEL APPOINTED ON BEHALF OF
DUNEDIN CITY COUNCIL**

Under	The Resource Management Act 1991 (the Act)
In the Matter	of an application for Resource Consent for the removal of a significant tree, T014
Between	ADAM O'BYRNE AND ANNA O'BYRNE Applicant
And	DUNEDIN CITY COUNCIL Local Authority

BRIEF OF EVIDENCE OF ADAM O'BYRNE

DATED 4 JULY 2025



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BRIEF OF EVIDENCE OF ADAM O'BYRNE

Introduction

1. My name is Adam John O'Byrne.
2. My wife, Anna O'Byrne and I, are the Applicants and own the property at 33 Preston Crescent, Dunedin.

In response to drainage questions

3. Following the hearing on 13 June I contacted Michael Brown, Sales and Plumbing Manager at Adams. Mr Brown had prepared a quote for Anna and I back in January 2025 regarding two drainage solutions. A copy of that quote is at Page 89 of the Agenda. The reason for contacting Mr Brown was to put a series of questions to him following comments from Council's Planner, Mr Finn Campbell, at the hearing. A copy of our email correspondence is enclosed as **Appendix 1**.
4. Mr Brown also notes that he received a call from a DCC employee about these options before that hearing. This was the first time I learned Mr Brown had been contacted by DCC. I since spoke with Mr Brown to confirm that the DCC employee that contact him was Mr Campbell.

In response to questions about insurance

5. In addition to contacting Mr Brown I also re-engaged with Mr Rhys Lasorsa who was the Project Manager acting for our insurer. This was following comments at the hearing regarding our insurance policy covering future damage from the tree.
6. I put the following question to him from Minute 1: *The Insurance assessment submitted with the application does not appear to correlate the flooding with the presence of the tree, rather the assessment notes that the risk the tree poses the unit is in respect of the roof. This contradicts the comments on Page 73 of the Agenda which state "The recent weather event has clearly shown something needs to be done*

to prevent more damage to the dwelling with the clients insurance company raising concerns the tree roots are contributing to the drainage issues.” Please clarify.

7. His email response is enclosed as **Appendix 2**.

Additional matters

8. I did not consider it necessary at the time, but given the correspondence with Mr Brown I consider it is important to raise now. On 10 June at 2:28pm I received a call from Mr Campbell asking for our permission to carry out a site visit with another drainage expert, presumably appointed by the DCC. I noted to Mr Campbell that we had already had an independent drainage expert (Mr Brown) meet on site with Council’s appointed Arborist (Mr Mark Roberts). I questioned the need for involving another expert so late in the process and that this would be unfair to us.
9. I also raised to Mr Campbell the conversation we had after the submissions were lodged (late March) in which he had assured me that consent would be granted, subject to the hearing panel going ‘rogue’. I did not know what to make of this but it certainly left me with the impression that we would not have to go to extent that we currently are to support our application, including by instructing legal counsel and lodging supplementary evidence. The change in his position in the s 42A Report has caused significant distress and financial hardship which could have otherwise been avoided.
10. Given how close this was to the hearing I sought legal advice as to how I should proceed. That advice confirmed my suspicion that I should decline that request on the basis that it would be a further expert opinion which was being offered outside of the existing evidence timetable and would not allow me the opportunity to respond (by lodging evidence prior to the hearing on 13 June).

Date: 4 JULY 2025

Adam O'Byrne

From: **Michael Brown** <michael.brown@adamsnz.com>
Date: Wed, Jun 25, 2025 at 9:19 AM
Subject: Re: Quote for 33 Preston Crescent
To: Adam O'Byrne <adamobyrne1@gmail.com>

Hi Adam

Thanks for the email, see my reply below.

Trenchless drainage, The only way to achieve this would be by pump. This is not a permanent solution as it would be subject to maintain and power outage.

Cut-off drains upslope, This is not a viable solution as it would direct water directly into the neighbouring property.

Armoring the building, Not sure how to achieve, not a viable solution.

Any other non-invasive method, Should have been addressed by DCC Building control via the consent process when the change of use consented was issued and signed off.

Also note I had a call from a DCC employee and explained all of these options above before the hearing.

The best solution to remedy this issue, is to remove the tree in question and alter the existing ground levels to compliant levels that should have been addressed by DCC Building Control via the building consent process.

Any questions please let me know.

Kind regards

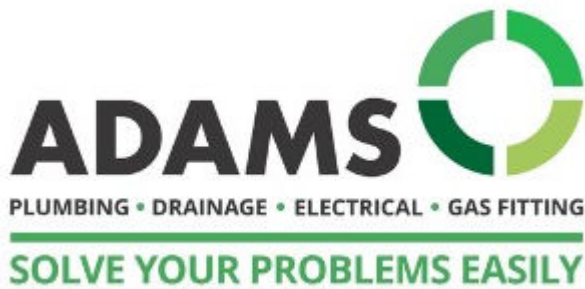
Michael Brown

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PROUDLY SPONSORING



From: Adam O'Byrne <adamobyrne1@gmail.com>

Sent: Wednesday, June 18, 2025 10:01 AM

To: Michael Brown <michael.brown@adamsnz.com>

Subject: Re: Quote for 33 Preston Crescent

Kia ora Michael,

You provided a quote for a drainage solution for our property, 33 Preston Crescent, a little while ago.

We are still in the process of determining the outcome for our resource consent to remove the tree on our property that is causing drainage issues for our property.

The DCC planner is suggesting we look at other alternatives that would potentially save us from removing the tree. The drainage options they have suggested are:

- Trenchless drainage
- Cut-off drains upslope
- Armoring the building
- Any other non-invasive method?

Are you able to comment on the viability of these options for our situation, which would be providing a reasonable and sustainable drainage solution?

Happy to discuss further if required, or if there is any other expert you can recommend for a second opinion, that would be greatly appreciated.

Best regards,

Adam O'Byrne

On Tue, Jan 28, 2025 at 3:35 PM Michael Brown <michael.brown@adamsnz.com> wrote:
Hi Adam

Option one is for a sump and drainage as if the tree was removed.

Option two is for a sump and pump if the tree can not be removed to avoid damaging the tree roots.

Kind regards

Michael Brown

Sales and Plumbing Manager, Dunedin

24 Townleys Road Kenmure • PO Box 292 • Mosgiel 9053 • New Zealand

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PROUDLY SPONSORING



From: Adam O'Byrne <adamobyrne1@gmail.com>
Sent: Tuesday, January 28, 2025 1:45 PM
To: Michael Brown <michael.brown@adamsnz.com>
Subject: Quote for 33 Preston Crescent

Hi Michael,

I am a little confused about these options in the quote.

Is there a solution to the drainage that can be achieved with the tree gone and the ground leveled out? Just in a hypothetical scenario, given we have applied to have the tree removed to assist us with permanent drainage solution. Without the need for pumps and sumps?

I will forward this onto the DCC to add to our consent application, however it would be good for us to know going forward if there is a simpler and cheaper alternative if the tree was removed.

Many thanks,
Adam

From: **Rhys Lasorsa** <rhys.lasorsa@morganprojects.co.nz>
Date: Mon, Jun 30, 2025 at 3:14 PM
Subject: RE: 33 Preston Crescent - P041337106
To: Adam O'Byrne <adamobyrne1@gmail.com>

Hi Adam,

Thanks for reaching out,

Emailing to whom it concerns regarding the large tree at the front of the property and the effects it has on the sleepout

The property is on a slight hill, with the sleepout towards the front of the property, next to the large tree. This tree overhangs the roof of the sleepout and is causing gradual deterioration of the roof. The insured is required to complete maintenance to the roof and gutter systems more periodically to prevent gradual deterioration. Please keep in mind gradual deterioration is excluded from the policy in all cases. The tree poses a large risk to the occupants inside the sleepout if any branches were to collapse, or if the tree dies and becomes unstable without knowledge from the insured.

The second issue with the tree is that the root bed level sits higher than the floor level of the sleepout. For the insured to adequately prevent further damages to the sleepout from flooding, adequate drainage is required to be installed around the sleepout, The ground level is required to be lowered 150mm below the sleep out with the brick veneer and unpaved surfaces, however currently, this is unachievable with the current large tree in the way. The risk of flooding without the removal of the tree and lowering of ground clearances/drainage

installed remains high. As the tree root system sits higher than the ground level and floor level around the sleepout, excessive amounts of water pools in front of the tree, blocking the water from flowing to the street or down the hill. The tree poses a large risk if the property was to experience another excessive rainfall event. It is highly recommended the tree be removed to mitigate further loss to the sleepout, both by flood and by strong winds or deterioration.

Cheers,



Rhys Lasorsa

Project Manager

Morgan Project Services (NZ) Ltd

DD: 027 720 0116 | **O:** 0800 MORGANS (0800 6674267)

E: Rhys.lasorsa@morganprojects.co.nz |

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From: Adam O'Byrne <adamobyrne1@gmail.com>

Sent: Monday, 30 June 2025 8:00 am

To: Rhys Lasorsa <rhys.lasorsa@morganprojects.co.nz>

Subject: Re: 33 Preston Crescent - P041337106

CAUTION: This email originated from outside of the organisation.

DO NOT CLICK links or open attachments unless you recognize the sender and know the content is safe.

IF UNSURE - I.T. are happy to investigate this for you - just forward this e-mail via a Help Desk ticket for review.

Hi Rhys,

Thanks for your time on the phone last week. I appreciate you calling me despite being very busy with other projects.

As discussed, if you could comment further on the issues/concerns/observations from our property related to the flooding and the inability of water to flow past the tree on the front of our property. This is why the water effected the walls on the side of the building all the way up to the bedroom. The assessment that you sent us (attached) was included in our evidence, and the following question has come from the hearing:

The Insurance assessment submitted with the application does not appear to correlate the flooding with the presence of the tree, rather the assessment notes that the risk the tree poses the unit is in respect of the roof. This contradicts the comments on Page 73 of the Agenda which state “ The recent weather event has clearly shown something needs to be done to prevent more damage to the dwelling with the clients insurance company raising concerns the tree roots are contributing to the drainage issues.” Please clarify.

I can recall either talking to you or Cade regarding the tree and root bed being higher than the street level, causing water to pool during the rain event. Any assistance in getting this message across to the panel would be greatly appreciated.

Best regards,

Adam O'Byrne

On Wed, Oct 16, 2024 at 1:23 PM Rhys Lasorsa <rhys.lasorsa@morganprojects.co.nz> wrote:

Hi Adam, Anna

Thanks for you time on the phone, as mentioned please see attached the assessment report for your records.

At the same time I have attached the finalised Reinstatement Scope of Works for your review.

Please confirm you are happy to proceed on the attached scope of works.

Cheers,



Rhys Lasorsa

Project Manager

Morgan Project Services

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**BEFORE THE HEARING PANEL APPOINTED ON BEHALF OF
DUNEDIN CITY COUNCIL**

Under	The Resource Management Act 1991 (the Act)
In the Matter	of an application for Resource Consent for the removal of a significant tree, T014
Between	ADAM O'BYRNE AND ANNA O'BYRNE Applicant
And	DUNEDIN CITY COUNCIL Local Authority

BRIEF OF EVIDENCE OF MICHAEL SMAILL

DATED 4 JULY 2025



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BRIEF OF EVIDENCE OF MICHAEL SMAILL

Introduction

1. My name is Michael (Mike) Smaill, Director of J G Smaill Limited, residing at Dunedin.
2. I have over 30 years' experience in plumbing and drain laying. I am certified with the Plumbers, Gasfitters and Drainlayers Board (registration number 14558) which is publicly accessible on the registry. I am also a director at J G Smaill Ltd, a plumbing and drain laying business based in Dunedin that recently celebrated 50 years in business.

Scope of Evidence

3. I have been engaged by Mr Adam and Mrs Anna O'Byrne to provide an expert opinion on drainage issues and opportunities related to a minor dwelling at their property at 33 Preston Crescent.
4. I understand that the O'Byrne's have sought resource consent to remove a significant tree that adjoins their property and that the application was heard on 13 June 2025. I also understand that the hearing was adjourned pending further information as set out in a series of questions by the hearing Panel in its Minute 1 dated 18 June 2025.
5. That minute includes a series of questions related to drainage issues, which is within my expertise. Since the hearing, the O'Byrne's have asked for my expert opinion on those questions to assist the panel in making its determination on this application.
6. In preparing this evidence I attended a site visit to the property on 25 June 2025. The purpose of the visit was to assess drainage issues and evaluate potential solutions for the minor dwelling, with particular consideration given to avoiding impact on the Structural Root Zone (SRZ).

Question 2

The site is sloping and it is natural for water to run downhill. The rain event in October 2024 result in Dunedin's wettest day on record. Without the presence of the tree, would the minor dwelling have avoided flood damage during this event and why?

7. The primary drainage issue for the minor dwelling is the height of the surrounding ground level. This is contributed by the location of the nearby tree and its root system. In rainfall events, water flows across the heightened ground level and falls towards the minor dwelling rather than being diverted around it. Furthermore, the stairs that surround the dwelling act operate as a dam which does not help with the flow path.
8. A commonly used solution to this issue would be to install a sump. Installing a sump would require trenching between the tree and minor dwelling to direct any surface water from around the dwelling out into the stormwater system at the street. A trench, as the name suggests, would require digging through the area, which would include any roots located therein.
9. If the tree was not in this area, then the sump solution would be readily available to install and would likely have avoided the flooding from October 2024.

Question 6

Could you please identify any other methods which could resolve the drainage issues for the site and which would also avoid the Structural Root Zone (i.e. cut off drains upslope of the minor unit) etc

Trenchless Method

10. My expertise extends to trenchless methods for installing drainage solutions, which I have considered in this instance.
11. Trenchless installation would have the potential to address drainage concerns while minimising damage to tree roots.

12. This technique requires the drilling an underground horizontal hole through which a new stormwater pipe would be installed. The obvious risk in this instance is that the drilling may occur through the trees root system which could cause damage to the tree. I defer to the expertise of others as to whether this damage would be irreparable.
13. Unfortunately, we cannot be certain whether the drilling will have a fatal impact on the tree. For that reason, it is not clear whether this method would be viable.

Cut-off drains upslope

14. Another form of trenching is “Cut-off trenches” which are both viable and common in this type of scenario.
15. However, a cut-off trench is only as good as the stormwater drain laid to drain the cut-off trench. Here, installing a cut-off trench would require a new connection to the Council network with an appropriately sized drain to the back of the minor dwelling.
16. The stormwater network is in the road shoulder adjoining the property and would be upslope from any sump. Draining upslope would require a stormwater pipe to be installed alongside the tree, which would have the same issues of not being able to avoid the SRZ.

Summary

17. There are a series of options which would address the drainage issues for the ancillary residential building, including:
 - (a) Installing an adequate stormwater management system.
 - (b) Lowering existing ground levels to improve runoff and comply with the building code.
 - (c) Installing a new stormwater connection to the street.
 - (d) Excavating areas to lower ground to improve site grading and water flow.

18. In my opinion, these solutions would not be viable unless they could avoid the SRZ, which seems doubtful in this instance.
19. In my opinion, there are no fully effective solutions to prevent future flooding without some degree of impact within the SRZ.

Dated 4 July 2025

Mike Smaill

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DUNEDIN CITY COUNCIL**

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Between	ADAM O'BYRNE AND ANNA O'BYRNE Applicant
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BRIEF OF EVIDENCE OF ROBERT AURIK

DATED 4 JULY 2025



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BRIEF OF EVIDENCE OF ROBERT AURIK

Introduction

1. My name is Walter Robert Aurik, I am a retired builder, residing in Alexandra.
2. I retired in December 2023 from my last job as a building inspector in Queenstown. However, I am a qualified Master Builder with 25 years' experience in the building industry. I have spent nine years managing a local hospital maintenance department and eight years as a building inspector for the Queenstown Lakes District Council.
3. I was engaged by Adam and Anna O'Byrne to produce a building report for the self-contained flat situated at 33 Preston Crescent. This building is adjacent to a scheduled tree, and the underlying motivation for the report was concern about potential damage caused by/in relation to that tree.
4. I understand that this report is subject to an additional information request from the Dunedin City Council. The purpose of this brief is to answer those questions.
5. I have been given a copy of the Environment Court's code of conduct for expert witnesses. Although this is not an Environment Court hearing I confirm that I have reviewed that document and confirm that this evidence has been prepared in accordance with it and that all opinions that I offer in this evidence are within my expertise. I have not omitted to refer to any relevant document or evidence except as expressly stated.

Question 1

*In your opinion how do you determine what is a moderate risk to a building?
Please provide any formula or supporting rationale used to support your
method of assessment.*

6. I have determined that a 'Moderate risk to a building' by relying on the recognised risk assessment method set out in **Appendix 1**.
7. In this case, my assessment was supported by:
 - (a) My experience as a qualified Master Builder of 25 years, 9 years as a maintenance manager and 8 years as a Team Leader building inspector for a Council.
 - (b) The rain fall information provided by Ministry for the Environment Land Environments NZ Dunedin figures which demonstrates a trending increase in extreme weather events.

Question 2

The site is sloping and it is natural for water to run downhill. The rain event in October 2024 result in Dunedin's wettest day on record. Without the presence of the tree, would the minor dwelling have avoided flood damage during this event and why?

8. In my opinion, the minor dwelling would not have flooded if the tree was not there.
9. As I discuss in my report the tree root system had lifted the ground level altering the natural slope of the ground so that it is now higher than the street. It is immediately apparent upon inspecting the site that the root system is well elevated about the ground level around the minor dwelling. In that circumstance, any excess water coming down the hill has nowhere else to go except around the minor dwelling. If the tree were removed, then drainage solutions would be available to redirect

any water that enters the property out onto the street into the stormwater network.

Question 3

The building code states that buildings should be designed to ensure surface water resulting from an event having a 2% probability of occurring annually shall not enter buildings. This design code would suggest that not all surface water can be prevented from entering a dwelling during some extreme rainfall events. The rain event in October 2024 was Dunedin's wettest day on record and it is the Panel's understanding that many drainage systems across Dunedin failed as the volume of water exceeded the capacity that the drainage systems were designed for.

- A. *Do you consider that under the Building Code, buildings and drainage systems are required to be designed to cope with rainfall events such as this?*
- B. *Is it a reasonable expectation for a landowner to have a property that does not flood when there is an extreme rainfall event.*

10. Clause E1 of the Building Code relates to Surface Water. Provision E1.3.2 requires that:

Surface water, resulting from an event having a 2% probability of occurring annually, shall not enter buildings

11. In essence, what this requires is that any rainfall event that has a 2% chance of occurring in a given year must be designed so that surface water *does not enter buildings*. On that basis, there is both a regulatory requirement and a general expectation that surface water not be allowed in residential buildings, such as the minor dwelling at 33 Preston Crescent.

Question 4

To your knowledge, has there been any Council inspection to confirm that this drainage installed/upgraded for the minor unit in 2017 was installed correctly or signed off by a drainlayer?

12. I am not a Council officer and these events occurred before the O'Byrne's owned the property. I would expect that the Council will be in a position to answer this question, if they have not done so already.

Question 5

The Insurance assessment submitted with the application does not appear to correlate the flooding with the presence of the tree, rather the assessment notes that the risk the tree poses the unit is in respect of the roof. This contradicts the comments on Page 73 of the Agenda which state "The recent weather event has clearly shown something needs to be done to prevent more damage to the dwelling with the clients insurance company raising concerns the tree roots are contributing to the drainage issues." Please clarify.

13. In my statement referred at Page 73 of the Agenda I comment on the need for work to be done to prevent further damage. Since that statement was prepared, Mr O'Byrne has sought clarification from the Project Manager, Mr Rhys Lasorsa, who was appointed by the O'Byrne's Insurer. A copy of that correspondence is enclosed with the evidence or Mr O'Byrne.
14. Mr Lasorsa's correspondence supports my view that work is required to be done in order to prevent further damage. It was for this reason that I stated that the insurance company had raised concerns that the tree roots are contributing to the drainage issues.

Question 6

Could you please identify any other methods which could resolve the drainage issues for the site and which would also avoid the Structural Root Zone (i.e. cut off drains upslope of the minor unit) etc

15. I am not a drainage expert. Mr and Mrs O'Byrne have sought opinions from two drainage companies to consider other drainage options; their conclusions are enclosed as Appendix 3 and Appendix 4. I rely on that evidence.
16. Regardless, I have significant experience in the building industry and for what it is worth, my opinion is consistent with theirs.

Question 7

In the application, cracks in the foundation are identified, especially near the base of the dwelling, and your evidence suggests that tree roots are putting pressure on the structure but note that cause of this cannot not be definitively attributed to the tree without further investigation. It is Mr Hagendorn's opinion that a root inspection is required to determine if there is any damage or risk to the foundation of the front flat. Do you agree or are there other ways that this be assessed?

17. I agree that it would be a good way to determine if there is any damage or risk of damage to the foundations. This would need to include removing the existing footpath. There is a cost to doing this and there is also a risk of damaging the root system.

Question 8

In your opinion, what is the critical risk arising from the cracking and over what timeframe.

18. The critical risk would include structural failure rendering the building unsafe. It is really difficult to put a time frame on this when you only have a really short history. Could be 4 to 5 years or 10 to 15 years. To provide

a more accurate assessment a root inspection would be required, which could damage the root system.

Question 9

With regard to the “Off Level bedroom wall” noted on Page 72 of the Agenda, how does this compare with the rest of the dwelling away from the area where the tree is located.

19. I did not check the rest of the dwelling away from the area that is being affected by the tree because it was not relevant to my engagement on the present issue.

Question 10

The garage appears to have been built in 1943 and extended in 1979. Would it be typical to have some degree of “off level” walls in a structure built around this time?

20. To be able to comment on this I would need to know who did the building work, what the ground conditions are, what construction methods were used.
21. However, based on the damage to the path beside the building it is highly likely to be the root system causing it to be off plumb.

Question 11

You note on Page 73 of the Agenda that there is considerable cost to the owner of the property to repair the damage to the dwelling and mitigate the ongoing risks from the tree and that these costs cannot be reasonably passed onto the owners. Could you please explain why you have formed this view?

22. I based this on my experience and knowledge of building costs, that it is a domestic house property, that repairing without addressing the cause is not a satisfactory solution, high cost of maintaining the tree or mitigating the ongoing risks from the tree, previous owners have not been held accountable for maintaining the tree.

Dated 4 July 2025

Robert Aurik

Appendix 1: Risk Matrix

Appendix 2: Risk matrix

TASK / LOCATION / EQUIPMENT DESCRIPTION					Risk of the dwelling flooding				
ASSESSED BY					Robert Aurik			DATE	13 th Dec 2024
TASK STEP	HAZARDS / RISKS	L(I)	C(I)	R(I)	CONTROLS	L(R))	C(R))	R(R))	PERSON RESPONSIBLE
1. Water entering the dwelling	Rain event up to 50mm in one day	2	1	1					
2. Water entering the dwelling	Rain event 51mm to 80mm in one day	3	2	6					
3. Water entering the dwelling	Rain event 81mm to 100mm in one day	3	3	9					
4. Water entering the dwelling	Rain event 101mm + in one day	4	3	12					

Risk Matrix		Consequences				
		Negligible (1) No flooding	Minor (2) Minor flooding 0 to 50mm of water entering the dwelling	Significant (3) Moderate flooding 50 to 100mm of water entering the dwelling	Severe (4) Serious flooding 100 to 300 mm of water entering the dwelling	Catastrophic (5) Major flooding destroying dwelling
Likelihood	Certain (5) 100% likely / almost 100% likely	Moderate (5)	High (10)	High (15)	Catastrophic (20)	Catastrophic (25)
	Likely (4) Will probably happen / is likely to happen	Moderate (4)	Moderate (8)	High (12)	Catastrophic (16)	Catastrophic (20)
	Possible (3) Could happen or plausible	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
	Unlikely (2) Improbable but could happen / not expected	Low (2)	Moderate (4)	Moderate (6)	Moderate (8)	High (10)
	Very Unlikely (1) Rare / not expected but remotely possible	Low (1)	Low (2)	Low (3)	Moderate (4)	Moderate (5)

Key

L(I)	Likelihood
C(I)	Consequence
R(I)	Level of Risk

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BRIEF OF EVIDENCE OF WILL HAGENDORN

Introduction

1. My full name is William (Will) Hagendorn, I am an arborist residing in Dunedin.
2. I provided the arborist report for Adam and Anna O'Byrne which is being relied on for their resource consent application. I understand that my report is subject to an additional information request from the Dunedin City Council. The purpose of this brief is to answer the following question from the Panel:

At the hearing Mr Robert's assessed that the installation of either of the drainage system options, set out in Mr Campbell's report on Page 24 and 25, would likely have a critical adverse effect on the health and stability of the tree. Do you agree and why?

3. In short, I agree with Mr Roberts' assessment and his conclusion that the drainage works will compromise the tree, for the reasons provided in his report.

Dated 4 July 2025

Will Hagendorn

TO: Hearings Committee

FROM: Finn Campbell, Graduate Planner

DATE: 18 July 2025

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2024-460
33 Preston Crescent
A & A O'Byrne.

INTRODUCTION

- [1] This addendum has been prepared on the basis of information available on 18 July 2025. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.
- [2] The hearings panel issued a minute requesting additional information on 18 June 2025. The applicant returned a response to that minute on 4 July 2025. This addendum reviews the applicant's returned information.

SUMMARY OF RECOMMENDATION

- [3] I accept the response to the minute contains information, discussion, and evidence produced by suitably qualified persons that affirm a position that there are unlikely to be satisfactory alternatives to the proposed drainage works that allows the tree and the dwelling to co-exist. This position is supported by suitably qualified council experts who reviewed the response to the minute. On that basis I consider that this application could not be mistaken for an application to remove a scheduled tree where there are reasonable alternatives which could preserve the tree and the dwelling. Therefore, I do not believe the integrity of the 2GP could be undermined if consent to remove the tree is granted.
- [4] This addendum has relied on the expertise of Mr Mike Brown, Mr Michael Smaill, Mr Ray Larsorsa, Mr Robert Aurik, Mr Mark Roberts; and the new evidence was reviewed by Council Building Inspector Joe Fitzsimmons and Council Drainage Officer Andrew Roberts. Council Landscape Architect Mr McKinley provided no additional assessment.
- [5] Therefore, I consider it appropriate to reconsider my position on the application and the discussion points contained in the s 42A report (agenda [139-154]).

REASONS FOR RECOMMENDATION

Response to brief of evidence from Will Hagendorn.

- [6] I accept this response and consider it consistent with the advice received. The proposed drainage solutions are uncontested in their impact on the health of the tree.

Response to brief of evidence from Michael Smaill.

- [7] I accept this response and consider that the discussion includes supporting discussion which assists with determining an appropriate recommendation. That position is supported by further advice from Council staff.
- [8] I requested a review of the additional information by a suitably qualified council drainage expert, Andrew Roberts, who reviewed the new information. His position is that Mr Smaill is suitably qualified and whose reputation is held in high regard within the Council Building Services Team. He could not see any reasons that Mr Smaill's advice "*wouldn't be considered in this situation*".
- [9] I requested a review of the additional information by a suitably qualified arborist, Mark Roberts, who reviewed the evidence. I sought particular clarification on the status of a trenchless method as raised by Mr Smaill, but who acknowledged a lack of suitable qualifications to assess any potential impact upon the tree. Mr Mark Roberts assists that discussion point with the following statement:

"As requested; looking at the July 4 BOE from Mike Smaill, specifically his response to question 6 ("Could you please identify any other methods which could resolve the drainage issues... ") and his comments around Trenchless Method (answers 10-13).

Mr Smaill notes [11] that a trenchless method "would have the potential to address drainage concerns while minimising damage to tree roots", but [13] "Unfortunately, we cannot be certain whether the drilling will have a fatal impact on the tree. For that reason, it is not clear whether this method would be viable".

Your questions to me were:

Are you able to provide arboricultural advice based on this level of detail?

No, I cannot provide informed comment with the level of detail provided. I have been involved with several Trenchless / directional drilling jobs where contact with tree roots has been avoided. For this to be able to happen the path of the drill has been below where the mass of the roots are expected to be (typically 1.5m or more below the surface). To achieve this (to get the angles) the starting point has been well outside the rooting area, the drill is driven under the tree and ends in a collecting pit.

To be able to answer your question, I would need to know the drill depth of the proposed path of the drill.

On the face of it, it could be an option, but I don't think it's as simple as that. To get a consistent fall that passes at least 1.5m under the tree and connects with the stormwater system, it is unlikely (sic) to be a straight line from the sump, under the tree, and out to the street. I'm guessing that drilling will need start downhill somewhere outside number 23 Preston Cres then push through and under number

27 before connecting with a sump at number 33. The path of the drill will need to avoid contacting any other underground service, and the depth of the sump would probably need to (sic) increased to accommodate. Somebody would need to confirm that it's possible to drill from A to B, and the Council would need to agree that it's acceptable do so.

And in response to your second question

If yes, can you advise if this trenchless methodology is an alternative approach that would be maintain the long term health of the tree?

If it's possible and permissible, a drainpipe installed at least 1.5m under the ground that passes under the roots of the tree, this approach should not negatively impact the longterm health of the tree. If it were a PVC type pipe and the joins are fussed (sic) together the roots are unlikely to be able to get into the pipe and cause a blockage."

[10] I sought clarification on the above statement by Mr Mark Roberts', asking:

"Can a trenchless method traverse through/into the SRZ and still ensure the health of the tree or root system?"

To which, Mr Mark Roberts provided the following clarification:

"according to the standards (the Australian AS 4970 and the British BS 3998) no works can take place inside the Structural Root Zone (SRZ). So no, a trenchless method cannot traverse through/into the SRZ and still ensure the health of the tree or root system. The standards are pretty cut and dry when it comes to that, and I would not recommend to go against the standards."

[11] I accept this position and conclude that, where a trenchless method is considered to be a viable alternative, it would be a situation where the trenchless method avoids the root system entirely, rather than which minimises penetration through the SRZ.

[12] I can agree with the advice from Mr Smaill that this likely wouldn't be a viable alternative. This is on the basis that the proposed drainage solution may have to start within the SRZ; and, in order to achieve an avoidance of the SRZ, the trenchless method may have an inlet and outlet outside the subject area and need to achieve depths of up to 1.5m to avoid the SRZ. Consequently, a trenchless method appears to be a method that could be used when avoiding the SRZ rather than allowing for drainage through the SRZ.

[13] This position is taken on the assumption that a drainage solution cannot easily be started outside the SRZ and still satisfactorily drain the flooding area within the SRZ, whilst also avoiding any penetrations/excavations within the SRZ.

Response to the brief of evidence from Adam O'Byrne.

[14] I accept the detail provided by Mike Brown on the consideration of alternatives and consider them brief, but the opinion of a suitably qualified person. I accept the detail that relying on the neighbouring property for an unnatural discharge is not preferred. I note there may be a situation whereby this could be part of a solution, but that it relies on permissions (land owners) and legal processes (easements/drainage rights) to guarantee it as an alternate solution for part of the overland flow. This is part of the basis for it not being preferred, the other part being that uphill attenuation around the slope near the

tree also would require excavations through the SRZ. Affirmed by the evidence from Mr Smaill. Excavations in the SRZ are not supported by the council arborist Mr Roberts.

- [15] I could not determine the reasons why armouring could be disregarded as a viable solution and sought clarification from Council Building Inspector Joe Fitzsimmons. Mr Fitzsimmons position was that: *"Armouring as a solution could be extremely complex as the cladding of the building is brick. This solution would require engineering/design and a building consent. A solution of this type would outweigh [sic] the gain and would most likely be cost prohibitive."* I sought clarification as to whether armouring would rely on excavations in order to be achieved. Joe Fitzsimmons advised that: *"Depending on the design this is most likely to be part of a solution."* On that basis I consider that armouring does not appear to be a viable solution and it has a high likelihood requiring excavations in the SRZ.
- [16] I accept the detail provided by Rhys Lasorsa as being a description of the site situation by an insurance assessor who is suitably qualified in the matters of insurance risk calculation and risk management, and that the statement provided is a clarification of a position taken by an insurance company who would consider the risks of the site when providing insurance. I consider the follow up from Rhys Lasorsa to be helpful in clarifying the original statements provided, but this information does not change my position on the recommendation of the application, as it is consistent with the original evidence which I accepted and have given weight to. It is accepted that insurance companies seek to manage risk and have a position that a known risk to the dwelling on the site should be managed – as a general principle. How they assess these risk factors may have regard to RMA considerations but is not limited to a planning lens.
- [17] I accept that prior to the preparation of the Section 42A report, that based upon the technical evidence available to me at that time, I gave an indication to the applicant that the information needed to consider the application appeared to be complete and satisfactory. That was the basis for this application proceeding to notification.
- [18] I had received an indication of how to consider the application from Mark Roberts from an arboricultural perspective and I had passed along that indication in my advice to Mr O'Byrne as to whether the application hearing process could proceed. In further working through my recommendation, I came to realise that the consideration of alternatives had not been sufficiently explored or ruled out. As a consequence, I did not have the confidence to advise a determinative recommendation to the hearings panel.
- [19] I subsequently sought clarification from Mr Brown, and the summary of that conversation is found in my hearing report [paragraph 98]. Mr Brown indicated that a pump was not a satisfactory solution and that a drain and sump is the preferred solution. He provided some reasoning that described the preferred solution and the unpreferred alternative solution. No other matters or considerations of alternatives were raised or discussed.
- [20] During the preparation for the hearing, I made a request to Adam O'Byrne to have a suitably qualified drainage person inspect the site and familiarise themselves with the it, in order to be able to respond to questions about any potential alternate drainage solutions. However, I accept that any expertise and evidence should be provided in a manner that enables all parties a reasonable opportunity for review and response to any assessment, deliberations, advice, or conclusions.
- [21] I consider that I was appropriate in signalling to the hearings panel at the hearing that the application should take into account the consideration of alternatives. The Section 42A assessment had been prepared based upon evidence available following the submission period. In the lead up to the hearing as the report was finalised and subsequently at the

hearing, it had become apparent that further evidence was necessary to be able to consider the application. My recommendation reflected this fact. I believe the consideration of alternatives is a crucial element to informing a decision and that accepting the proposed solution was not appropriate when it could potentially undermine the integrity of the 2GP. Otherwise, the undesirable precedent could be that: a standard drainage solution justifies a trees removal in a situation where there are readily available alternatives that can preserve both the tree and the building.

RESPONSE TO THE BRIEF OF EVIDENCE BY ROBERT AURIK.

- [22] I accept this response and consider that the discussion includes supporting discussion which clarifies the relationship between the tree, the building, and the building code. That position is supported by further advice from Council staff.
- [23] I accept the evidence provided as suitable and substantiated by an appropriately qualified person. This position is supported by Joe Fitzsimmons, a qualified council building inspector.
- [24] I accept the clarification regarding the insurance report and consider that it is uncontested that Mr Lasorsa and Mr Aurik both agree that preventative works can reduce the risk upon the building.
- [25] I consider the advice affirms my original position that there is at least a moderate risk to the building from flooding.

SUMMARY OF ALTERNATIVES

- [26] Any alternative drainage solution which requires ground excavation in or through the SRZ is not supported.
- [27] No alternative drainage solution was proposed that could sufficiently avoid ground excavations and provide an effective drainage solution.
- [28] The discussed drainage methodologies were:
- Trenchless.
 - Armouring.
 - Cut-off drains.
- [29] These proposed solutions all invariably require excavations within the SRZ in order to be effective solutions, and on that basis, they have not been found to be satisfactory to the question: *“does a drainage solution exist which allows for the tree and the dwelling to be retained”?*

CONCLUSION

- [30] Having regard to the above assessment, I recommend that the application be granted subject to the advised conditions recommended in the s42a report.

REASONS FOR RECOMMENDATION

- [31] I consider that the likely adverse effects of the proposed activity will be moderate or more than minor at a local level, particularly in terms of amenity value.

- [32] I consider that the proposed drainage works will compromise the roots within the SRZ of T014 and that there is no alternative which could maintain the building and the tree.
- [33] All discussed solutions invariably require excavations within the SRZ which is incompatible with the health of T014 as prescribed by the tree standards (Australian AS 4970 and the British BS 3998).
- [34] I consider that the ancillary residential unit is lawfully established and occupied but its occupation has induced a demand to remove the tree.
- [35] I consider that the proposal is not contrary with the overall objective and the relative policies of the Partially Operative 2GP.
- [36] I consider that supporting evidence has resolved the “true exception” test and I am comfortable considering that the integrity of the Partially Operative 2GP will not be undermined.
- [37] Overall, I consider that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991, which is to promote the sustainable management of natural and physical resources.

Addendum prepared by:



Finn Campbell
Graduate Planner

18 July 2025
Date