
Applicant:	Adam and Anna O’Byrne
Location:	33 Preston Crescent, Dunedin
Application Number:	LUC-2024-460
Subject:	Additional Information Request
Date:	18 June 2025

Introduction

This minute is to confirm the oral direction given at the hearing on Friday, 13 June 2025.

The application is for a non-complying activity. In order for the Hearings Panel to be able to consider granting consent the activity must pass both tests set out in Section 104D of the RMA.

The effects of the tree removal would be more than minor and this is not disputed by the applicant or the Council staff. A number of submitters are also in agreement with this assessment. As such, the critical determination remaining is whether the application passes through the second 104D test, in that the application is not found contrary to relevant 2GP Objectives and Policies namely Objective 7.2.1 and Policy 7.2.1.2.

The applicant asserts that the application passes the exemptions set out in Policy 7.2.1.2.c and 7.2.1.2.e, being:

- there is a moderate to significant risk to buildings;
- removal of the tree will result in significant positive effects in respect of the efficient use of land;

The Panel notes that the site is a residential site which supports one primary dwelling and a second minor dwelling. There is no evidence currently before the Panel which suggests that the site is not being used efficiently.

In terms of Policy 7.2.1.2.c, the applicant’s key experts, Mr Aurik and Mr Hagendorn did not appear at the hearing and, as such, the Panel were unable to test the assumptions and conclusions set out in either of Mr Aurik’s and Mr Hagendorn’s evidence.

As such, the Panel directs Mr Aurik and Mr Hagendorn to respond to the matters set out below.

For Mr Aurik

- 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.

Drainage

- 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?
- 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.
- 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?
- 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.
- 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

Foundation

- 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?

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

For Mr Hagendorn

- 12) 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?

Timetable

- 1) The applicant respond to this Direction by **5pm on 4 July 2025**.
- 2) The information provided to the applicant will be circulated to Council staff and a further review of the recommendation of Mr Campbell with input where required from Mr Roberts and Mr McKinlay must be submitted by **5pm on 18 July 2025**.
- 3) All responses will be circulated to submitters for their information.



Kirstyn Royce
Chair of Hearings Committee