

7 July 2016

The Dunedin City Council
C/- Steven Tuck
Mitchell Partnerships
PO Box 489
DUNEDIN 9054

Dear Sir/Madam

RESOURCE CONSENT APPLICATION: LUC-2015-634
239 CAMP ROAD
DUNEDIN

Your application to remove trees within the scheduled significant tree group (G028) was processed on a notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991 (the Act). No submitters wished to be heard in respect of the application and therefore, pursuant to Section 100 of the Act, the application was considered without a hearing by an Independent Commissioner on 7 July 2016.

I advise that the Independent Commissioner has **granted** consent to the amended application. The decision is outlined below, and the decision certificate is attached to this letter.

BACKGROUND

Resource consent is sought to remove trees within a scheduled tree group listed as G028 in the Schedule of Protected Trees (Schedule 25.3) of the Dunedin City District Plan. The group consists of a mixture of species but is predominantly macrocarpa. The application identified 3 subgroups within the overall group, and the Applicant originally sought to remove at total of 26 trees from subgroups 1 and 2 with the trees in subgroup 3 to be retained. The application has subsequently been amended to retain tree 1 and trees 6-12 as the risk from these trees has been assessed as being at a lower level.

Safety along an important tourist traffic route was the primary driver for the application to remove the trees combined with the ongoing costs of removing limbs from the road.

WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS

No written approvals were submitted with the application and the application was publicly notified in the Otago Daily Times on 6 February 2016. Copies of the application were sent to those parties the Council considered could be directly affected by the proposal and submissions closed on 7 March 2016. One submission was received by the close of the submission period. This submission was in support of the proposal and the submitter indicated a desire to be heard.

SECTION 100 - REQUIREMENT TO HOLD A HEARING

No submissions in opposition were received in respect of the application. The submitter that had initially requested to be heard confirmed to the Council that they no longer wished to be heard. The Applicant also did not wish to be heard and consequently there is no obligation to hold a hearing of the application under section 100 of the Act.

A hearing was initially considered necessary due to the divergence of expert arboricultural opinion between the Applicant and the Council in relation to the retention of 8 trees with a lower risk level. The Applicant requested the hearing proposed for 19 April 2016 be cancelled and attempted to resolve the difference of expert opinion through caucusing between the arboricultural experts. While the caucusing occurred, it did not completely resolve the issues and in order to expedite the removal of the trees that were agreed to constitute the greatest risk, the Applicant modified the application to retain the 8 lower risk trees on 15 June 2016.

The Applicant's amended proposal is now aligned with the expert advice from the Council's consultant arborist and the consultant planner's Section 42A report recommendation. After reviewing the amended application, the submission, the expert advice and the Section 42A report the Independent Commissioner has determined that a hearing is not required and that the decision can be made on the papers.

Procedural Issues

No procedural issues were noted by the Commissioner or raised by any party.

Principal Issues of Contention

The principal issue of contention is the degree of safety risk posed by trees within tree group G028, and whether this risk outweighed the loss of amenity values arising from the removal of the trees.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the consultant planner's report detailed in full the relevant statutory provisions and other provisions the Commissioner considered. Regard was given to the relevant provisions of the following chapters of the operative Dunedin City District Plan: 4 Sustainability, 6 Rural Zones, 15 Trees and 20 Transportation, as well as the objectives and policies of the proposed Second Generation District Plan. Statutory provisions considered included Sections 5, 7(c) and 7(f) within Part 2 of the Act. Regard was also given to the Operative and proposed Regional Policy Statements for Otago.

Main Findings on Principal Issues of Contention

The Hearings Commissioner has considered the application, submissions, the Section 42A report, the relevant statutory and plan provisions, and the principal issue in contention. The main findings on the principal issue have been incorporated within the reasons for the decision discussed below.

Decision

The Commissioner reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991.

*That, pursuant to sections 34A and 104B and after having regard to Part 2 matters and section 104 of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a discretionary (unrestricted)*

activity being the removal of 18 trees and the pruning of 8 trees within the listed tree group G028 located on the site at 239 Camp Road and within legal road on Camp Road, Dunedin, being that land legally described as Lot 8 Deposited Plan 1453 and held in Computer Freehold Register OT413/33, subject to the conditions imposed under section 108 of the Act as shown on the attached certificate.

REASONS FOR THE DECISION

- [1] The Commissioner has considered the effects issues associated with the amended application and he agrees with Mr Roberts the consultant planner that prepared the Section 42A report that the effects arising from the removal of the trees (subject to the retention of tree 1 and trees 6-12) are acceptable. The Commissioner accepted that public safety is of paramount importance and the current condition of some of the trees within G028 creates a degree of risk which is not acceptable. As a consequence of the risk, significant positive effects will accrue from removal of the trees. The Commissioner also noted that there was no community support for the retention of the trees.
- [2] The Commissioner acknowledged that the primary reason for seeking the removal of trees is safety. In this regard it was accepted that the arboricultural experts for the Council and the Applicant agreed on the most at risk trees, and that the trees at risk have been identified by an appropriate tree risk assessment method. As risk is the primary reason for removing the trees, amending the application to exclude trees that can be safely retained through a pruning regime was also considered by the Commissioner to be appropriate.
- [3] The Commissioner acknowledged the expert landscape advice which considered that there would be a reduction in amenity values arising from the removal of trees within the tree group. He also noted that while the Applicant had volunteered native replanting, it would not achieve the same effect as the existing trees, as the trees will have a lesser stature and will be less dominant. Nevertheless the planting will provide a degree of mitigation and this will become more effective over time. The Commissioner agreed with the recommendation of the consultant planner that it is appropriate to formalise replanting through conditions that require a replanting plan.
- [4] Conditions in relation to the protection of trees to be retained, expert supervision of the removal process, noise control, safety and fence reinstatement are supported by the Commissioner as appropriate to ensure adverse effects are effectively managed.
- [5] The Commissioner noted that the section 42A report considered that the original proposal was inconsistent with the key relevant objectives and policies of the operative Dunedin City District Plan which are directed toward tree protection and do not address issues of safety in a material way. The application was amended subsequent to this report such that only the trees posing the greatest risk were to be removed.
- [6] The Commissioner noted that that Policy 7.2.1.2 is strongly worded and seeks that the removal of scheduled trees be avoided unless there was a significant risk to personal or public safety, among other things. Policy 7.2.1.3 provides for the modification of scheduled trees provided it is undertaken in accordance with best practice. The Commissioner accepted the assessment in the section 42A report that the modification/pruning will not have significant adverse effects. The Commissioner was satisfied overall that the amended application and the removal of only the trees at greatest risk resulted in the proposal not being inconsistent with Objectives and Policies of the Plan. In terms of the proposed 2GP the Commissioner agreed the proposal is more consistent the key objectives and policy as safety is identified as a consideration for the

removal of significant trees. He has given only limited weight to the proposed 2GP objectives and policies as they are at early stage in the plan making process.

- [7] The proposal is considered to be consistent with the objectives and policies of the operative and proposed Regional Policy Statements for Otago.
- [8] The proposal is considered to be consistent with the Part 2 matters of the Resource Management Act 1991 as it will ensure safety while mitigating the effects on amenity to a practical extent.

COMMENCEMENT OF CONSENT

As stated in section 116 of the Resource Management Act 1991, this consent shall only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

RIGHT OF APPEAL

In accordance with section 120 of the Resource Management Act 1991, the Applicant and submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The Applicants.
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Please direct any enquiries you may have regarding this decision to John Sule whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Prepared by:



John Sule
Senior Planner

7 July 2016

Approved by:



Andrew Henderson
Independent Commissioner

7 July 2016

Consent Type: Land Use Consent

Consent Number: LUC-2015-634

*That, pursuant to sections 34A and 104B and after having regard to Part 2 matters and section 104 of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a discretionary (unrestricted) activity being the removal of 18 trees and the pruning of 8 trees within the listed tree group G028 located on the site at 239 Camp Road and within legal road on Camp Road, Dunedin, being that land legally described as being that land legally described as Lot 8 Deposited Plan 1453 and held in Computer Freehold Register OT413/33, subject to the conditions imposed under section 108 of the Act as shown below:*

Location of Activity: 239 Camp Road, Dunedin: Road Reserve on Camp Road

Legal Description: Lot 8 Deposited Plan 1453 (CFR OT/413/33)

Lapse Date: 7 July 2021

Conditions:

- 1 The activity shall be carried out generally in accordance with the information in the application dated 23 December 2015 and the amendment to the application made on 15 June 2016, except where modified by the following conditions of consent.*
- 2 Groups 1 and 2 (as identified in the application) shall be removed in part, with trees 1 and 6-12 identified in the report of Mr Peter Weymouth dated 12.01.2016 to be retained.*
- 3 Pruning of Trees 1 and 6-12 shall be undertaken in accordance with the report provided by Mr Peter Weymouth dated 12.01.2016.*
- 4 Prior to the removal of the trees, the trees within the tree group to be retained are to be identified and clearly marked. The trees to be retained are to be protected from damage during the removal process and only the 18 approved trees are to be removed. The removal of trees within tree group G028 shall be in accordance with arboricultural best practice and undertaken by a suitably qualified persons.*
- 5 The consent holder shall advise the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz of the date that trees within the tree group G028 are to be removed. The written advice shall confirm the identification of the trees and the measures to be taken to protect the trees that are to be retained. The written advice shall be provided to the Resource Consent Monitoring team at least five (5) working days prior to the removal of the tree.*
- 6 The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of trees shall be limited to the times set out below and shall comply with the following noise limits (dBA);*

Time Period	Weekdays (dBA)		Saturdays (dBA)	
	Leq	L_{max}	Leq	L_{max}
0730-1800	75	90	75	90
1800-2000	70	85	45	75

Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise. No work is undertaken on Sundays or Public Holidays nor between 8.00pm to 7.30am Weekdays or Saturdays.

- 7 To ensure the safety of road users during the removal process temporary traffic management shall be in place as required during removal or pruning works.*
- 8 Any fencing damaged during the removal or trimming of the trees shall be 'made good' to a stock proof condition to ensure the proposed replanting is not subject to grazing by livestock.*
- 9 The Applicant shall submit a replacement planting plan prepared by a suitably qualified person for approval by the Resource Consent Manager prior to any tree removal or pruning authorised by this consent being undertaken. The replacement planting plan shall be based upon the draft concept landscape plan dated 7.12.2015 attached in Appendix D to the application but shall recognise the retention of trees 1 and 6-12. The plan shall also provide the following:*
 - A planting programme for the replacement planting on site.*
 - A maintenance programme (minimum five year period) beyond completion of planting.*
- 10 Replanting in accordance with the above plan shall be completed within 12 months of the approval of the plan by the Resource Consents Manager.*

Advice Notes:

- 1 In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
- 4 This consent shall lapse after a period of five years from the date of granting of this consent. This period may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
- 5 It is noted that no written approval was obtained from the adjoining landowner of Lot 8 DP 1453 nor was a submission received from that party. The consent holder shall note this consent does not defeat the individual property rights of this landowner to prevent Council from removing any trees within G028 that are located on Lot 8 DP 1453.
- 6 Under the Heritage New Zealand Pouhere Taonga Act (2014) an archaeological site is defined as a place associated with pre-1900 human activity where there may be evidence relating to the history of New Zealand. For pre-contact Maori sites this evidence may be in the form of bones, shells, charcoal, stones etc. In later sites of European/Chinese origin, artefacts such as bottle glass, crockery etc. may be found, or evidence of old foundations, wells, drains or similar structures. Burials/koiwi tangata may be found from any historic period.

In the event of an "accidental discovery" of archaeological material, the following steps are to be taken:

- All activity affecting the immediate area shall cease and the Regional Archaeologist of Heritage New Zealand will be notified.
- Steps shall be taken to secure the site and ensure that archaeological matter remains undisturbed.
- Works at the site area shall not recommence until an archaeological assessment has been made and archaeological material has been dealt with appropriately.
- If any archaeological remains or sites of interest to Maori are identified, no further modification of those remains shall occur until the Trust Regional Archaeologist and Tangata Whenua have been consulted and an appropriate response advised.
- For burials/koiwi tangata, steps 1 to 4 above shall be taken and the Regional Archaeologist of Heritage New Zealand, the New Zealand Police and the Iwi representative for the area contacted immediately.
- An archaeological authority from Heritage New Zealand may be required before work can proceed.

Contact details for the Regional Archaeologist for Otago/Southland are:

Dr Matthew Schmidt
Regional Archaeologist Otago/Southland
Heritage New Zealand
PO Box 5467
Dunedin
Ph. +64 3 470 2364, mobile 027 240 8715
Fax. +64 3 4773893
mschmidt@historic.org.nz

If Dr Matthew Schmidt is not contactable, please try:

Bev Parslow, Senior Archaeologist, 04 470 8055; or

Kiri Petersen, Archaeologist, 04 470 8063

Issued at Dunedin this 7th day of July 2016



Andrew Henderson
Independent Commissioner