

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

Under	The Resource Management Act 1991 (the RMA)
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

**CLOSING SUBMISSIONS OF COUNSEL ON BEHALF OF THE
APPLICANTS**

DATED 29 JULY 2025



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May it please the Hearing Panel:

1. These closing submissions follow a hearing of an application by Adam and Anna O'Byrne for the removal of a scheduled tree, T014.
2. That Application was heard on 13 June. In the Panel's words, the key issue was:

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 7.2.1.2.¹

3. At the hearing, Mr Campbell's recommendation for the Application was a "soft decline". Mr Campbell has since reconsidered his view and recommended consent be granted subject to the conditions included with the s 42A Report.² Counsel for the Applicants support that conclusion and submit that this recommendation is available to the Panel.
4. Given the above, these submissions will provide a pathway through which the Panel may grant the application. In doing so, Counsel for the Applicants rely on the statements of Mr Aurik, Mr Hagendorn, Mr Brown, Mr Smail, Mr Larsorsa, and Mr Roberts.

Pathway to Grant the Application

Section 104D Assessment

5. To grant resource consent the Panel must be satisfied that the Application passes either test at s 104D.

¹ Minute 1 on Resource Consent Application LUC-2024-460 33 Preston Crescent, Dunedin, dated 18 June 2025 (**Minute 1**), at 1.

² Addendum on Resource Consent Application LUC-2024-460 33 Preston Crescent, Dunedin, dated 18 July 2025, Finn Campbell (**Addendum**) at [30].

6. The Applicants support Mr Campbell's assessment that the Application *is not* contrary to the Dunedin City Council Second Generation District Plan (**2GP**) Section 104D(1)(b) Resource Management Act 1991 (**RMA**). On this basis, the Application passes the s 104D gateway and can be considered against s 104 RMA.

Section 104 Assessment

7. When considering the Application, s 104 RMA requires the Panel to have regard to a series of considerations. Those relevant to this application are:
 - (a) Any actual and potential effects on the environment of allowing the activity,
 - (b) Any relevant provisions of a plan or proposed plan, and
 - (c) Any other matter the Panel considers relevant and reasonably necessary to determine the Application.

Actual and potential effects

8. Any decrease in amenity value ought to be weighed against the potential adverse effects of the tree remaining in situ and the positive effects of removing the tree for the Applicants.
9. It is accepted that the ancillary residential unit has a flooding issue.³ That issue is evidenced by the flooding that occurred during the October 2024 flooding and the potential risk of that occurring in future.
10. In reliance on the evidence of Mr Aurik, 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."⁴

³ Brief of Evidence of Michael Smaill at 7-9; Recommending Report on Resource Consent Application LUC-2024-460 33 Preston Crescent, Dunedin, dated 20 May 2025, Finn Campbell (**S 42A Report**) at [6]; Email correspondence from Rhys Lasorsa at 3:14pm 30 June 2025 (Minute 2 on Resource Consent Application LUC-2024-460 33 Preston Crescent, Dunedin, dated 22 July 2025 (**Minute 2**) at pg 10).

⁴ Brief of Evidence of Robert Aurik, at 11.

11. In reliance on the evidence of Mr Brown,⁵ Mr Smaill,⁶ and Mr Mark Roberts,⁷ Counsel for Applicants submit that the only readily available drainage solution requires a trench to be dug through the structural root zone.
12. In reliance on the evidence of Mr Hagendorn,⁸ and Mr Mark Roberts,⁹ Counsel for the Applicants submit that the installation of such a trench is likely to “have a critical adverse effect on the health and stability of the tree.”¹⁰
13. On this basis, removing the tree will enable the Applicants to adequately protect the ancillary residential unit from flooding. This conclusion is supported by Mr Campbell, when stating “there are unlikely to be satisfactory alternatives to the proposed drainage works that allows the tree and the dwelling to co-exist.”¹¹

Relevant provisions of the 2GP

14. The relevant provisions of 2GP are Objective 7.2.1 and Policy 7.2.1.2.¹²
15. In reliance on the evidence of Mr Aurik, there is a moderate risk to the ancillary residential unit.¹³ This is accepted by Mr Campbell, who has maintained the position that there is “at least a moderate risk to the building”.¹⁴
16. On this basis, the Application is consistent with the exception at Policy 7.2.1.2.c and therefore meets the policy requirements.
17. Further, Mr Campbell appears to have changed his position and now considers that “the proposal is not contrary with the overall objective and

⁵ Email correspondence from Michael Brown at 9:19 AM 25 June 2025 (Minute 2 at pg 6).

⁶ Brief of Evidence of Michael Smaill, at 17-19.

⁷ Addendum, at [10].

⁸ Brief of Evidence of Will Hagendorn.

⁹ S 42A Report at pg 176-177.

¹⁰ Brief of Evidence of Will Hagendorn, at 2.

¹¹ Addendum, at [3].

¹² Minute 1, at 1.

¹³ Brief of Evidence of Robert Aurik, at 6 – 7.

¹⁴ S 42A Report, at [6]; Addendum at [25].

the relative policies of the Partially Operative 2GP.”¹⁵ Counsel for the Applicant supports this position.

18. In addition, we maintain our view that the application passes the exception at Policy 7.2.1.2.e as removal of the tree would result in positive effects in respect of the efficient use of land. The Panel has considered there to be “no evidence ... which suggests that the site is not being used efficiently.”¹⁶ We disagree. There is evidence that the building will not be insured in future as against the risk from the tree. If the building cannot be insured then the current use of the building as an ancillary residential unit will not be continued. The building will effectively remain empty. That is not an efficient use of land.

Other matters

19. The Applicants support Mr Campbell’s belief that “the integrity of the 2GP could [not] be undermined if consent to remove the tree is granted.”¹⁷ This is an important as it demonstrates this Application is a “true exception”.¹⁸
20. Finally, the Application will enable the Applicants to meet their obligation to provide the residential unit in the condition required by the Residential Tenancies Act 1986.

Conclusion

21. For these reasons, it is submitted that consent should be granted.

Dated 29 July 2025

¹⁵ Addendum, at [34].

¹⁶ Minute 1, at 1.

¹⁷ At [3].

¹⁸ Addendum, at [36].

Simon Peirce / Josh Alexander

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