
TO: Hearings Committee

FROM: Jane O'Dea, Associate Senior Planner

DATE: 6 November 2025

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2025-151
81 CHAIN HILLS RD

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 6 November 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] In preparing this report I have relied on the reports/advice provided by
- Mr Will Eden, Arborist for the applicant (refer to Appendix 1);
 - Mr Pat Hamer, applicant's builder (refer to Appendix 1);
 - Mr Mark Roberts, consultant arborist to the Dunedin City Council (refer to Appendix 3);
 - Mr Luke McKinlay, Dunedin City Council Landscape Architect (refer to Appendix 3);
 - Mr Joe Fitzsimmons, Team Leader Inspections, Dunedin City Council Building Services (refer to Appendix 3).
- [3] I viewed the site on 25 September 2025.

SUMMARY OF RECOMMENDATION

- [4] I consider that the proposal should be granted consent, subject to the conditions contained in Appendix 5 to this report. I consider that there will be adverse effects on amenity values, but that these will only be of a minor nature, and localised. Furthermore it has been demonstrated that the tree poses a risk to property, and that this will be an ongoing issue.

DESCRIPTION OF PROPOSAL

- [5] Resource consent is sought to remove a scheduled tree. The tree is a Gum (*Eucalyptus* sp.) The tree is scheduled in the Proposed Second Generation Dunedin City District Plan (the 2GP) Appendix A1.3 Schedule of Trees ('the schedule') as TX010.

- [6] A copy of the application is contained in Appendix 1 of this report.
- [7] The application refers to the removal of gum trees plural. In an email dated 16 July 2025 the applicant confirmed that the application is for the removal of *G029 Gum tree - the one right beside the dwelling*. This clarifies that the application does not seek consent to remove scheduled tree T230.

DESCRIPTION OF SITE AND LOCATION

- [8] The site is legally described as Lot 2 DP 444991 and is held in Record of Title 558886.
- [9] The site is a 5300m² site located on the north eastern side of Chain Hills Rd. The locality is semi-rural in character. The site contains a house and separate building that has been converted into a sleepout with bathroom. There are two substantial gum trees towards the front of the site. These are scheduled trees TX010 and T310. The Council's consultant arborist, Mr Mark Roberts, estimates the height of both trees at 26m. A sleepout is located under the canopy of the southern-most of these two trees. The location of the two trees in relation to each other is shown on the aerial image below.

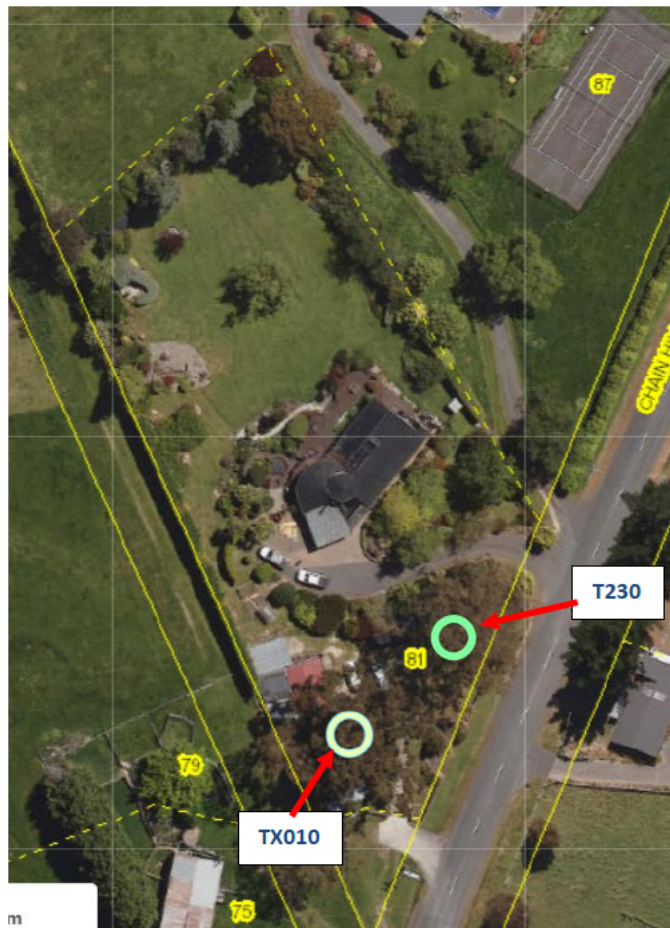


Figure 1: Aerial view of 81 Chain Hills Rd showing location of scheduled trees TX010 and T230

- [10] There are no other scheduled trees in the vicinity. There are numerous individual trees, including eucalyptus trees, groups of trees, hedges and shelterbelts in the wider locality.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [11] 2GP Plan Change 1 (Minor Improvements) ('PC1') was notified on Wednesday 20 November 2024. Under this plan change the scheduled tree entry for the subject tree was amended from a group listing 'G029' to a singular tree listing 'TX010.' The submission period ended on 18 December 2024, at which point rules that did not have submissions in opposition to them were deemed operative. This included the change in reference from G029 to TX010. The upshot of this plan change is that the smaller eucalyptus trees clustered near TX010 (but excluding scheduled tree T230) are not scheduled.
- [12] A building permit was issued for the garage in 1989 (reference H-1989-287511).
- [13] Building consent ABA-2024-375 was granted on 7 August 2024 to 'Convert Garage to Bedroom with Bathroom.' This relates to the now sleepout under the canopy of TX010. A Code Compliance Certificate has been issued for this work.
- [14] I note that the sleepout is referred to as a 'dwelling' in the application. I mention this distinction because in planning terms the word 'dwelling' usually refers to a fully self-contained residential building ie. with kitchen, bathroom and sleeping accommodation. The converted garage is not consented as a self-contained residential unit and no kitchen was indicated in the building consent plans. Accordingly I refer to the building throughout this report as a 'sleepout' rather than a dwelling.
- [15] There are no previous resource consents for tree maintenance or any previous applications to remove trees at the site.

2001 STEM ASSESSMENT

- [16] T1191 received a total STEM score of 169 points in the assessment dated 1 August 2001.
- [17] The accepted score to warrant inclusion in the District Plan tree schedule is 145. I note that some value may have been attributed to group value however it is unclear which other trees were considered to be part of the group at the time. In any case it is now just the one tree which is scheduled in the District Plan, as has been clarified via Plan Change 1 ('PC1') (refer to section 18 below for further information about PC1).
- [18] A copy of the STEM assessments is included as Appendix 4.

2GP AUDIT OF SCHEDULED TREES 2013/14

- [19] During the District Plan review process, most of the significant trees were examined in 2013-2014 by a Council Landscape Architect and a Council Arborist, to see if the trees were still worthy of continued inclusion in the 2GP's 'schedule' of significant trees (Appendix A1.3). However, a new STEM assessment was not undertaken in 2013, and the 'assessment' was more akin to a visual audit and inventory. A photograph of the subject tree is in Council's records from the 2GP audit, and attached as Appendix 4 of this report.

ACTIVITY STATUS

- [20] Dunedin currently has two district plans: the Operative Dunedin City District Plan 2006 (the "District Plan 2006", and the Proposed Dunedin City Second Generation District Plan. On 19 August 2024, the Proposed Dunedin City Second Generation District Plan became partially operative and now supersedes the District Plan 2006, except for limited specific provisions and identified areas that are still subject to appeal. Where these provisions and appeals are relevant, the District Plan 2006 must still be considered.

- [21] In this instance, there are no relevant appeals, and this application has been processed with reference to the 2GP only.
- [22] As noted in section 11 above, PC1 amended the schedule entry from a group listing 'G029' to a singular tree listing 'TX010.' This change became operative on 18 December 2024.
- [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.

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

- [24] The subject site is zoned Rural Residential 1 in the 2GP and is not subject to any overlays. Scheduled trees TX010 and T301 are identified on the site. T301 is unaffected by this application.
- [25] The proposal falls under the definition of the following city-wide activity:

Scheduled trees activities
- [26] As a result, only the City-wide Activities rules in the Proposed 2GP need consideration.
- [27] Rule 7.3.2.3 of the activity status table of the Scheduled Trees Section states that '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.
- [28] It is noted that 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. Both arborists consider the tree to be healthy and accordingly the application cannot be considered as a restricted discretionary activity.
- [29] The application is therefore a **non-complying activity** in accordance with Rule 7.3.2.3.

NATIONAL ENVIRONMENTAL STANDARDS

- [30] There are no National Environmental Standards relevant to this application.

NOTIFICATION AND SUBMISSIONS

- [31] No written approvals were submitted with the application.
- [32] Rule 7.4 of the 2GP states that applications for the removal and any other works that will lead to the death or terminal decline of a scheduled tree will be publicly notified.
- [33] The application was publicly notified in the Otago Daily Times on 9 September 2025.
- [34] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal.
- [35] Submissions closed on 10 October 2025.
- [36] 5 submissions were received by the close of the submission period. All submissions support the application. One submission was received late, on 14 October. The panel

may consider whether to waive the time limit for submissions in order to accept this submission.

- [37] 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?
Dion Bennett 33 Chain Hills Rd	Support	Submitter did not elaborate on why they support the application.	No
Gordon Hunt 29 Chain Hills Rd	Support	The tree is posing a serious risk to life should it blow over completely or limbs fall off it in high winds. Power lines may be affected as well and the potential for a fire event from this may eventuate. (As happened in Morris Road) The damage to the building on the property is obviously being caused by the roots of the tree.	No
James Moffat (Protect Private Ownership of Trees Society) [REDACTED]	Support	The tree is no longer suitable for the property owners, nor as a heritage tree in the Dunedin long term plan. Gum trees are common in the city. The condition of the tree is causing the owners stress due to falling limbs and building foundation damage. Submitter believes TX010 is not listed on the Council's significant trees schedule.	Yes – if a hearing is to be held.
Andrew and Karen Trebilcock [REDACTED]	Support	In high winds which are often (two or three times a month) branches from the tree are blown onto the access driveway of the farm leased by the submitters. Concern about physical danger to stock and themselves as well as damage to their vehicles and farm machinery. If the tree fell it could destroy the submitter's woolshed and yards. And result in disruption to their farming operation. Concerned about the tree taking out the power line to the farm and stopping power to the woolshed and electric fences. Concerned about potential for a vegetation fire and, without electric fences, potentially stock could escape onto the road causing a traffic hazard.	No
Jesse Richardson [REDACTED]	Support	Submitter lives directly across from 81 Chain Hills Road. Trees are very noisy in the wind and drop a lot of debris across the road and into our property at 84 Chain Hills Road. They have the potential to fall towards the submitter's property, damaging powerlines, trees, fences and buildings. The damage to buildings and vehicles at 81 is obviously caused by these trees.	No
LATE SUBMISSION Malcolm Thomson [REDACTED]	Support	Trees cause danger to passing motorists. Debris and branches hit cars on a windy day and leave debris on the road causing cars to swerve to avoid it. This has been happening for over 25 years since the submitter has lived in the area.	No

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[38] 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

[39] 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 assessment of the activity.

[40] In terms of the 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.

[41] The 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.

[42] In terms of the activities that may take place within proximity of a scheduled tree, the 2GP excludes new buildings, structures, additions and alterations, public amenities, all earthworks, new roads or additions or alterations to roads, network utility activities and site development activities from the dripline of the tree, or distance from a tree that is half the height of the tree (whichever is greater). Activities employing trenchless methods (the installation of pipelines and cables below the ground with minimal excavation) are exempt from this 'exclusion zone' if a number of requirements are met, however as a permitted activity this is not considered to have any relevance to the current application.

[43] Overall, I consider there are no relevant 'permitted effects' in terms of activities that may be undertaken within proximity of this scheduled tree that could feasibly be disregarded when considering the effects of the proposed removal.

Assessment of Effects

[44] The assessment of non-complying activities contained in section 7.8.2 of the 2GP provides useful guidance for this application. Assessment matter 7.7.2.2 in relation to the assessment of restricted discretionary activities determines matters of discretion as the 'effects on amenity.' While matters of discretion are not limited in this case, amenity remains a principal consideration.

Amenity

- [45] The Council's Landscape Architect, Mr Luke McKinlay, has reviewed the application and visited the site. He provided the following (abridged) comments in relation to the potential effects of removing this tree in terms of the amenity values of the area and amenity component of the STEM assessment:

There are three main assessment categories to a STEM report – condition (health), amenity (community benefit) and notability (distinction). The condition section is typically assessed by an arborist and the amenity section is typically assessed by a landscape architect. The notability section generally requires written and substantiated evidence to support additional "merit points".

The 2001 council STEM assessment of TX010 resulted in a total "score" of 162. Assessment of the condition section of the STEM resulted in a subtotal of 75, the amenity section scored 87. There were no additional notable evaluation points for this tree.

My re-evaluation of the 2001 STEM assessment confirms that it remains valid, with no recommended changes to the scoring, which is as follows:

Stature: 21-26m+ (21 points)

Visibility: 2km (15 points)

Proximity: 3+ (21 points)

Role: Important (15 points)

Climate: Important (15 points)

In general, it is considered that due to its stature and location, near the front boundary of the site, this tree forms a prominent natural feature from surrounding locations on Chain Hills Road. It is one of the largest trees in this part of Chain Hills and provides a natural counterpoint to nearby built environment. Further, because it is located on a ridgeline, at least parts of this tree are visible from distant locations, including residential parts of Mosgiel.

It is also noted, however, that the other scheduled Eucalyptus tree on this property (T301) will remain. In addition, there are other nearby tall shelter trees and shelterbelts, including Eucalyptus spp nearby. As such, the subject tree is not the only tall natural feature in this area. In this context, while TX010 currently makes a positive contribution to the visual amenity of surrounding parts of Chain Hills Road, its removal will likely have a moderate rather than high impact on existing surrounding amenity values. From more distant locations, such as residential parts of Mosgiel, the surrounding context of other tall shelter trees on Chain Hills and the remaining Eucalyptus trees on the subject site (both scheduled and not scheduled) will mean that the effects of the removal of TX010 will not be highly prominent.

- [46] I adopt Mr McKinlay's assessment. I consider that any effects on amenity values will be localised, and no more than minor.
- [47] None of the submissions received raise concerns about adverse effects on amenity values.

Historical Associations

- [48] The 2001 STEM assessment estimates the age of the tree at 40 plus years. The earliest aerial photography Council holds dates from 1947-1952, however it is not obvious whether the tree was present at this time, and if it was, it had not reached any notable stature that makes it obvious in the aerial photography. Until the existing house was

constructed around 1989 the land appears to have been bare farmland. From the limited amount of research I have undertaken, there is no immediate evidence that the tree has any significant historical associations.

Health and Safety and Risk to Property

[49] The applicant has raised the following issues in relation to risk to property and property damage:

- The tree drops branches, causing damage to vehicles, such as a caravan, parked underneath it;
- Concern about safety of person residing in the sleepout beneath the tree from heavy branches dropping onto the building;
- Both trees are within close proximity to the road and main power lines for Chain Hills. If one of these limbs fall and hit the power lines it will take out all of power to Chain Hills;
- Structural damage to sleepout below the tree;
- Mr Pat Hamer, the applicant's builder observed the following damage to the garage during work to convert it to a sleepout:
 - *A big crack that went right across the concrete pad approximately 3m span of the room. Further investigation on the outside of the building shows at the start of the crack is a giant tree limb protruding below ground;*
 - *Mr Hamer considers it likely that 'over the years the large tree roots that are growing under the building have caused the building to move as the tree has grown. It has also made the walls heavily off level requiring the builders to pack and re-level some areas of the bedroom to allow ease walking through the sliding door. Further, on the exterior of the building they had to use specially made flashings above the new windows to suit with the walls being heavily out of square.'*

[50] Mr Joe Fitzsimmons – Team Leader Inspections from DCC Building Services visited the property and his assessment corroborates that of Mr Hamer. Mr Fitzsimmons noted the following:

- *The gum tree is very close to the side of the building;*
- *The gum tree has a large root that appears to run directly under the building that has cracked the slab in the past;*
- *The building walls are out of plumb;*
- *A membrane system was installed by Adhesion Sealing to existing concrete slab to prevent moisture ingress under building consent ABA 2024-1091;*
- *The flashing system round the sliding door is out of level due to the tree root inspect (sic) on the building. These flashings are still in good order and appear to have little movement at this time;*
- *The ceiling by the sliding door has fresh cracking on the ceiling joints due to most likely tree root movement;*
- *From what I have seen and how close the tree is to the building and the tree roof system most likely compromising the concrete slab and building structure.*

- *The tree and root system will continue to have a impact on the building on the building overtime further impacting the slab, building structure and elements.*
- *The tree branch over the building is of concern.*

[51] I accept the advice of the two building practitioners that the tree has caused damage to the sleepout.

[52] I do not put a significant amount of weight on the damage to vehicles parked under the tree canopy as justification for the removal of the tree. Risk of such damage can be mitigated by parking the vehicles elsewhere.

[53] Several submitters also raised concerns about the potential for property damage, risk to stock on an adjoining property (presumably at 75 & 79 Chain Hills Rd), and fire risk, as well as general nuisance from fallen debris.

[54] Mr Mark Roberts, the Council's consultant arborist, undertook a risk assessment and tree inspection. Below are the key points from Mr Roberts' assessment:

When determining risk three separate factors need to be considered. The likelihood of failure, the likelihood of impact, and the consequences of failure and impact;

*The risk rating for this tree is **Moderate** because it is possible that whole or partial tree failure may occur within the next 5 years, and because there is a medium chance of the falling tree or tree part landing on the building or a vehicle due to the occupancy and location.*

There is a low chance of the tree or a tree part landing on a person and a very low chance of the tree or a tree part landing on the powerlines.

According to the TRAQ methodology the highest risk rating is the overall risk rating. For this tree, the risk is Low for people, Low for powerlines, and Moderate for buildings and vehicles – the overall risk rating is Moderate.

There is a higher chance of branch failure occurring on this tree compared to T301 because they are different species with different distributions of foliage (images two and three). The foliage is denser and concentrated towards the ends of the branches, which affects how the wind's energy is applied and distributed.

A Moderate risk is generally considered tolerable where imposed on others, if actions can be taken to maintain or reduce the risk to become As Low As Reasonably Practicable (ALARP).

Because the level of risk is Moderate, maintenance or mitigation can be undertaken to reduce the risk.

In this instance recommended maintenance would be to crown reduce the entire tree (perhaps 10 to 15%) and to remove deadwood that is greater than 30mm in diameter or 1m in length. NB: to manage the ongoing risk, crown reduction work would need to be undertaken on a regular basis (say every three to four years).

It is not uncommon for eucalypts to drop small branches and old fruit (gum nuts). E. globulus is a species that sheds its bark. Under the tree was a large drum filled with material that had fallen from the tree.

At the September 2024 site visit I was shown some larger branches (approx. 75 to 100mm in diameter) that had fallen from this tree. One of them had embedded itself into the garden.

I measured the height of the trees at around 26m each. At that height even relatively small branches can generate considerable force when they land;

- [55] Mr Roberts considers risk to powerlines from falling branches to be very low, although he acknowledges that some eucalypts drop bark which can impact on power lines.
- [56] Section 7.8.2 of the 2GP provides guidance on the assessment of resource consents to remove scheduled trees, and seeks to avoid the removal of scheduled trees unless there is a 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. I do not believe this level of risk has been substantiated from the information I have considered.
- [57] However the assessment guidance also provides scope for tree removal to be considered where there is a moderate to significant risk to buildings. I consider that the risk does meet this threshold due to the ongoing damage to the converted sleepout from tree roots, as confirmed by Mr Hamer, Mr Fitzsimmons and Mr Roberts; and the 'moderate' risk of damage to buildings and vehicles, for example through branch failure, as stated by Mr Roberts.

Consideration of Alternatives

- [58] A possible alternative to removal is crown reduction and ongoing 3-4 yearly pruning, as outlined by Mr Roberts. I would imagine that this would not address the issue of ongoing property damage caused by the tree's roots, although it would reduce the risk of property damage or injury to a person from falling branches.

Positive Effects

- [59] There is no significant public benefit that will ensue if the tree is removed.
- [60] Removal of the tree will eliminate safety and property damage concerns which will no doubt provide peace of mind to the owners and to those neighbours who have raised concerns about risk to property, including nearby powerlines.

Cumulative Effects

- [61] 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".

- [62] 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'.
- [63] The removal of the tree is unlikely to have significant cumulative adverse effects. The removal of the tree would cumulatively contribute to the loss of vegetation across the city. However, in the context of the immediate, semi-rural environment characterised by

large mature trees and hedges/shelter belts, the loss of the tree, albeit a substantial one, is not considered to combine with the loss of other vegetation in the area to any noticeable extent that would represent a tipping point in terms of the amenity and character of the area and natural environment.

Effects Assessment Conclusion

- [64] After considering the advice of Mr Hamer, Mr Fitzsimmons, Mr Roberts and Mr McKinlay on the health and amenity values of the tree, and the other effects noted above, I consider that overall, the adverse effects of the proposal to remove TX010 will be no more than minor.
- [65] I note that no submitters have raised concerns about any adverse effects of removing the tree but that the submitters consider there would be positive effects in terms of reduction of risk to property, stock, people and powerlines.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [66] 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.
- [67] 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))

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

Proposed 2GP

- [69] The following 2GP objective and policies are considered to be relevant to this application:

Scheduled Trees Objectives and Policies

Objective/Policy	Is the proposal Consistent 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, but not contrary to this objective. The loss of the tree will somewhat degrade the visual landscape and history of the neighbourhood/locality. However, this tree is one of a number of trees that contribute to the visual landscape and history of the neighbourhood. The loss of this one tree will therefore not represent a tipping point in terms of compromising the visual landscape and history of the area.

Policy 7.2.1.1 Enable removal of a scheduled tree where they are certified as 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.	This policy is not considered to be directly relevant to the proposal given that the tree is not ‘dead or in terminal decline,’ and nor is there any question regarding the tree’s health and vitality. There is therefore no policy support for the removal of the tree based on the grounds of diminished health.
Policy 7.2.1.2 Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless: a. 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; b. the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure; c. there is a moderate to significant risk to buildings; d. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities; e. removal of the tree will result in significant positive effects in respect of the efficient use of land; or f. removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree.	The application is considered to be consistent with this policy. I do not consider it has been demonstrated that there is a significant risk to personal or public safety; or a risk that is required to be managed under health and safety legislation. Nor is removal of the tree the only option to manage the risk that does exist. Nevertheless the tree does pose some risk. I accept that there is a low and moderate degree of risk to personal safety and buildings respectively. However the consequences of limb or tree failure could be severe. Removal of the tree is not the only possible option for managing the risk. Crown reduction and ongoing maintenance will mitigate risk of branches dropping, but it will not address possible ongoing damage to the sleepout building from tree roots. Nevertheless, the policy only requires that there is a ‘moderate to significant risk’ to buildings. Based on the comments from Mr Roberts, and observations from the applicant’s builder and Council’s building inspector, I consider the threshold of ‘moderate’ is met. Accordingly the application can be judged to be consistent with this policy. Risk to powerlines, while a possibility, does not seem to be a key issue and accordingly no significant adverse effects on power lines has been established. The removal of the tree will not result in significant public benefit that could not otherwise be achieved.

Overall Objectives and Policies Assessment

- [70] The above assessment demonstrates that, overall, there is a degree of conflict with the Proposed 2GP significant tree objectives and policies, particularly Objective 7.2.1. However, the proposal is not so repugnant to any provision so as to be considered ‘contrary’ to that provision.

- [71] The Objectives and Policies clearly define the circumstances where the effects from the removal of a scheduled tree are considered acceptable ie. when a tree is dead or in terminal decline. These circumstances do not apply to the proposal. The question therefore becomes whether the risk posed by the tree warrant its removal. In this case I consider that there is sufficient risk to people and property to reach the threshold required under Policy 7.2.1.2.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [72] It is considered that there is no invalidity, incomplete coverage or uncertainty within 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 104

- [73] 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 proposal will be minor.
- [74] 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. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [75] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would not be contrary to the key objectives and policies of the Proposed 2GP.
- [76] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. Given the very specific and localised nature of the proposal, there are no particularly relevant provisions within the Regional Policy Statement for Otago; and overall the objectives and policies of the RPS have been delivered through the 2GP which has been thoroughly assessed in this report.

Section 104D

- [77] 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.
- [78] 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.
- [79] In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of the 2GP. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, the proposal is assessed as being either consistent or inconsistent with, but not contrary to,

the relevant objectives and policies of the Scheduled Trees sections of the Plan. The proposed development is therefore considered to also satisfy the second 'gateway' test outlined by Section 104D.

- [80] In summary, the application passes both the threshold tests in Section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to undertake a full assessment of the application in accordance with Section 104 of the Act. In turn, consideration can therefore be given to the granting of the consent.

Other Matters

- [81] 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.

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. I consider the granting of consent to this application is unlikely to give rise to any undesirable precedent for other applications to remove trees because the granting of consent would only be relevant to another application where:

- The tree poses a moderate risk to property by virtue of its proximity to a habitable building, and;
- mitigation via pruning and ongoing maintenance would still not necessarily address all likely causes of building damage, and;
- the effects on amenity values from the removal of the tree would only be minor due to the characteristics of the tree itself, as well as its context.

- [82] 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.

- [83] I therefore consider that the proposed activity does not represent a challenge to the integrity the Proposed 2GP.

RECOMMENDATION

- [84] That the application to remove significant tree TX010 be **granted**.

REASONS FOR RECOMMENDATION

- [85] I consider that the likely adverse effects of the proposed activity will be acceptable given the particular circumstances relevant to this case.

- [86] The proposal is not considered to be contrary to the key relevant objectives and policies of the 2GP.

- [87] I consider that the proposal will not undermine the integrity of the 2GP.

[88] 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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6 November 2025

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6 November 2025
