
TO: Hearings Committee

FROM: Lily Burrows, Planner

DATE: 19 March 2019

SUBJECT: **RESOURCE CONSENT APPLICATION
LUC-2019-739
8 SCOTIA STREET, WAIKOUAITI
MS KATHLEEN RYAN**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 19 March 2019. 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.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs 124 - 128 below, I consider that the proposal is inconsistent with the key relevant objectives and policies of both the Dunedin City District Plan and the Proposed Second Generation District Plan. The proposed removal of 19 eucalyptus trees is not considered to be satisfactory in this instance. However, the removal of 16 of the eucalyptus trees (five of which are significant) is considered acceptable because the effects can be adequately mitigated by replanting and the retention of 12 eucalyptus trees that are considered to be important contributors to amenity and biodiversity. As a result, I consider that the proposal be accepted in part, subject to the compliance with the recommended conditions of consent.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to remove to remove 19 eucalyptus trees (the majority of which are *Eucalyptus globulus*), approximately nine of which are listed in Schedule 25.3 of the operative District Plan, and Appendix A1.3 of the Proposed 2GP as group G089.
- [4] There are 29 eucalyptus trees on the property and ten on nearby road reserve. The road reserve trees are listed as significant under group G088 of both the operative and proposed district plans. Mr Waymouth, the applicant's agent, has split the eucalyptus trees into five groups which will be adopted and used throughout this report. The applicant proposes to remove all 19 eucalyptus trees to the west of Hawksbury Lagoon, and retain the nine trees bordering the lagoon. Using Mr Waymouth's numbering system, the following trees are therefore sought to be removed from the site; 01b, 02b, 03b, 04c, 05c, 06c, 07c, 29c, 08d, 09d, 10d, 11d, 12d, 13d 14d, 15d, 16d, 17d, 18d and 19d. The applicant seeks to retain 20e, 21e, 22e, 23e, 24e, 25e, 26e, 27e and 28e. The 19 eucalyptus trees proposed to be removed range in height, from 10m to 30m and the canopy spread ranges from 2m to 20m.

DESCRIPTION OF SITE AND LOCATION

- [10] The subject site is 4047m² in area, and is an irregular rectangular shape with a diagonal boundary alongside Hawksbury Lagoon. The site gently slopes away from Scotia Street towards Hawksbury Lagoon. The site contains an existing dwelling and gravel parking area, as well as numerous small storage sheds and is currently fringed with well-established vegetation. The site contains 29 eucalyptus trees, as well as a variety of other vegetation.
- [11] The surrounding area is mainly residential, with Hawksbury Lagoon adjoining the site to the east, and walking access into the lagoon located directly to the northeast of the site. There is a designated railway corridor nearby to the north.
- [12] The site is legally described as Lot 10 Block IV Deeds 51, Lot 11 Block IV Deeds 51, Lot 52 Block IV Deeds 51, Lot 53 Block IV Deeds 51 (held in Record of Title OT237/210).

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [13] The current application includes a report from Mr Buddingh, dated 29 March 1997, which related to a historic application for works within the dripline of the significant trees, surrounding the construction of a new dwelling. The report states that the eucalyptus trees form part of the heritage landscape surrounding the historic home at 10 Scotia Street. 10 Scotia Street was subject to a subdivision consent in 1991, and a new Prefab home was relocated onto the then vacant site at 10 Scotia Street in 2014. As such, it is difficult to determine from Council records where the historic home is located and whether or not it is on the subject site.
- [14] The Buddingh report (1997) stated that there were ten eucalyptus trees on the site with a diameter of 500mm, measured at 1200mm above ground level. Nine of those specimens were *Eucalyptus globulus*, and one specimen was unknown to Mr Buddingh. He stated that the age of those trees were approximately 60 – 80 years old. Mr Buddingh used the diameter measurements to consider that nine of the trees were protected under the Dunedin City District Plan at that time. However, the subject site was located within Silverpeaks County Council in 1991 and as such the significance status under the Dunedin City District Plan was not relevant. I have consulted the Silverpeaks County Council plan for that time period and did not see any rules relating to the significant status of trees on private property. I consider that there was likely a misunderstanding in 1991 and that resource consent for the works within the dripline of the eucalypts was not required at that time.
- [15] 2001 STEM Assessment
- [16] Council conducted a STEM assessment on the eucalyptus trees in 2001. The group of eucalyptus trees was awarded with a STEM score of 156 points. That score was compiled with a condition evaluation of 75 points, and an amenity evaluation of 81 points. The STEM assessment stated that there was a group of 10+ of eucalypts on the site.
- [17] Council's 2014 survey of significant trees

A Council Landscape Architect and a Council Arborist re-assessed the Schedule of significant trees in 2014 in order to see if the trees were worthy of continued inclusion in the Proposed 2GP. Their audit did not reassess the STEM, but they stated the trees were 'healthy' and took photographs to audit the trees. The photographs showed approximately three eucalyptus trees in close proximity to the vehicle access and power pole, five trees in close

proximity to the dwelling and possibly one or two of the trees located further towards the rear of the site. Importantly, the audit describes nine or ten trees to be part of the protected group G089 (Appendix 3).

[18] LUC-2018-726

An application for minor significant tree maintenance was granted on 17 December 2018 for crown cleaning and crown reduction of two significant trees, listed under the operative and proposed plans as G089. The trees are classified as 05c and 29c under Mr Waymouth's numbering system.

[19] LUC-2018-782

Resource consent was sought for the emergency tree removal of a significant tree (*Eucalyptus nicholii*) within G089. The tree was described as 07c under Mr Waymouth's numbering system and was removed for health and safety reasons, with the most apparent hazard being identified by a horizontal crack on the tree trunk. The tree was leaning at a 16° angle towards the dwelling and was found to be of high risk to the health and safety of the occupiers of the site, and the dwelling. The application was therefore granted on a non-notified basis on 31 January 2019.

[20] Quantifying the number of significant trees on site

The Resource Management Act 1991 states that a territorial authority may, for the purposes of carrying out its functions under the Act, and achieving the objectives and policies of the plan, make a rule that prohibits or restricts the felling, trimming, damaging or removal of a tree or trees on a single urban environment allotment only if, in a schedule to the plan –

- a) The tree or trees are described, and
- b) The allotment is specifically identified by the street address or legal description of the land, or both.

In this instance the trees were described in 2001 as a group of 10+ eucalyptus trees (the exact species was not described, only the genus), and the street address was described as 8 Scotia Street. As such, any eucalyptus specimen on the site could potentially be classified as significant. It is noted that the STEM assessment stated '*Eucalyptus sp.*' which infers only one species, however, this may have been an accident and as such is not taken to infer there is only one relevant species of eucalyptus trees under protection.

If there is doubt as to whether or not a tree, or trees, is significant, then it has previously been Dunedin City Council's approach to only identify trees as significant when they are included in a photograph attached to the STEM assessment, or Council's 2014 audit of the trees (Appendix 3). If that is the case in this instance, then only the eucalyptus stand in the photographs will be listed as significant, being approximately the nine trees closest to the vehicle entrance and power pole. The 2014 Council audit specifies nine or ten trees are in the group. The trees therefore most likely to be significant are as follows; 01b, 02b, 03, 04, 05c, 06c, 07c (removed), 29c and 08d. As such, the nine trees in close proximity to Hawksbury Lagoon would not be protected, and neither would the majority of trees along the southern boundary to number 10 Scotia Street. The placement of the green dot on the planning maps also suggests that the group is located in the north western corner of the site.

[21] Applying Council's historic approach to the matter, it is reasonable to assume that there were only approximately eight significant eucalyptus trees contained within group G089, because one has already been removed. The other trees are therefore not considered to be protected.

[22] Current ownership of the site

The site was purchased by the current property owner in 2010.

ACTIVITY STATUS

[23] Dunedin currently has two district plans: the operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.

[24] 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.

Dunedin City District Plan

[25] The subject site is zoned as **Residential 1** in the Dunedin City District Plan. Scotia Street is classified as a Local Road. The site is associated with two hazards; intensified shaking (whole site), and liquefaction (eastern section)

[26] The restriction on removal or pruning of trees is limited to a specific list of trees included as schedule 25.3 in the Dunedin City District Plan and Appendix A1.3 in the Proposed 2GP. All trees listed in the operative district plan have been assessed using the STEM (Standard Tree Evaluation Method) evaluation. Most of the significant trees/groups were surveyed again in 2014 by a Council Landscape Architect and a Council Arborist, to see if the trees were worthy of continued inclusion into the Proposed 2GP's appendix of significant trees. The assessment of this group of trees determined that it warranted specific protection under both the operative and proposed district plans.

[27] The STEM method has three distinct components, being condition (health) of the tree, the amenity (community benefit) that it provides and its notability. With regard to assessment of 'Condition' and 'Amenity', each tree is assessed and allocated points for the following factors:

- (i) Form
- (ii) Occurrence
- (iii) Vigour and vitality
- (iv) Function (usefulness)
- (v) Age
- (vi) Stature
- (vii) Visibility
- (viii) Proximity of other trees

- (ix) Role in the setting
- (x) Climatic influence.

- [28] Items (i)-(v) are in relation to the condition of the tree. Items (vi)-(x) are in relation to the amenity the tree provides. With regard to its notability, points are allocated for recognition factors such as 'feature', 'association', 'commemoration', 'remnant', 'rarity' etc.
- [29] The points received for each factor are totalled. Any tree that is allocated a sum total of 147 points or more is considered to be 'significant' and generally worthy of inclusion in the District Plan's schedule of trees.
- [30] The subject group of trees received a total STEM score of 156 when assessed in 2001. The highest portion of the score was attributed to the Amenity Evaluation section, with the stature receiving 21 points, and climate being awarded 21 points. The 2001 STEM assessment is attached in Appendix 3.
- [31] The following rule in the District Plan applies to any scheduled significant tree:
- 15.5.1(i) The removal or modification of any tree or pruning, trimming or any other modification or activity within the canopy spread of any tree listed in Schedule 25.3.
- [32] As such, the removal of this tree is a **Discretionary Activity** pursuant to Rule 15.5.1(i) of the District Plan. Consequently, resource consent is required.

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

- [33] The subject site is zoned as **Township and Settlement** and is associated with a Wāhi Tupuna Mapped Area (Plan ID: 2, Name: Matainaka/Hawksbury Lagoon), a Hazard 3 (Coastal) Overlay Zone, a Hazard 2 (Flood) overlay zone and a Minimum Floor Level mapped area. All of the latter three layers are currently under appeal. All layers relate to the eastern section of the site where it adjoins Hawksbury Lagoon.
- [34] The Proposed 2GP was notified on 26 September 2015 and given legal effect on 7 November 2018. Some rules became fully operative following the close of submissions, where no submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved.

In this instance the following performance standard is relevant whereby Rule 7.3.2(3) states that the removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree is assessed as a **non-complying activity**. This rule has been appealed by the University of Otago and as such is not yet fully operative. It is noted that the relevant appeal seeks for activities that breach this standard to be assessed as discretionary activities, rather than non-complying.

- [35] Overall status

Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.

In this case, there is more than one rule involved, and the effects are linked. As a result, having regard to the most restrictive activity classification, the proposal is considered to be a **non-complying activity**.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES")

- [36] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.
- [37] It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the proposal.

NOTIFICATION AND SUBMISSIONS

- [38] No written approvals were submitted with the application.
- [39] The application was publicly notified in the Otago Daily Times on 19 December 2018.
- [40] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on 8 February 2019.
- [41] Five submissions were received by the close of the submission period. Four submissions were in support and one submission was opposed.
- [42] 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?
Robyn Anne Hill	Oppose	▪ Resident of property in close proximity to subject site ▪ Has noticed large numbers of birdlife occupying the significant trees. ▪ The trees are significant, and are of a mature age and as such should not be removed. ▪ The trees do not appear to be a health and safety issue through means such as 'limb drop' or other forms of degeneration.	No
Barry and Margaret Sloper	Support	▪ Property owners and residents of 7 Scotia Street, Waikouaiti ▪ They consider the trees to be very tall, which in turn presents extreme danger when strong winds prevail. ▪ Concerned regarding nuisance effects from leaf fall blocking up	No

		gutters ▪ The trees are not native and grow very quickly, and they consider that the trees should not have been planted anywhere near housing. The trees are for plantations in rural areas, not townships. ▪ They are concerned about the health and safety to people	
Trevor Farquhar	Support	▪ Property owner and resident of 12 Scotia Street ▪ Informed that the trees were planted by the then property owner to mark the end of WWII ▪ Notes the trees provide food source for tui and bellbirds seasonally ▪ Provide roosting spots for wood pigeons seasonally ▪ The remaining 19 protected eucalypts in the area should adequately continue to serve the above needs ▪ The remaining 19 eucalypts will adequately contribute to the greater landscape. ▪ Considers gum nuts, twigs and branches falling from the trees to be a hazard to houses at 8 and 10 Scotia Street. ▪ The trees are a hindrance to the future development (including possible subdivision) of 8 Scotia Street. ▪ The trees significantly shade 8 and 10 Scotia Street throughout the year. ▪ Excavation of drainage and services trenches serving 10 Scotia Street may have damaged the root system of a number of the trees. ▪ Considers prior tenants of 8 Scotia Street to have no respect for DCC's Schedule of Significant Trees and saw them and their friends and family prune trees on the site, fell a large macrocarpa tree and other smaller eucalypt trees for the purpose of firewood before they left the site. ▪ Wants the works to be carried out by a qualified and skilled arborist(s) with third party property damage insurances, and wants the DCC to require a bond of c\$25,000 for incidental repairs or reinstatements to neighbouring properties for the duration of works and clean up.	No.

Emily Cooper	Support	- Property owner and resident of 10 Scotia Street, Waikouaiti. - Emily and her husband are concerned over their safety because their house is located under the trees. - Considers there to be amenity values from the trees, and that they contribute to the ambience of Hawksbury Lagoon. - They bought their property believing the trees would remain, due to their protected status under the District Plan. As such, they support the replanting of the area for amenity and privacy. They want the replanting to be deciduous, so that the trees do not shade them in winter. - They support the application and want the replanting to factor in their future sunlight.	No.
R J Neil Kennedy	Support	Considers that the trees are too tall for the residential area they're located in.	Unknown

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[43] 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

[44] 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.

[45] Removal of a significant tree is specifically provided for under the operative District Plan as a Discretionary (Unrestricted) Activity, and under the Proposed Plan as a non-complying activity(if the tree is healthy) and therefore there is not considered to be a relevant permitted baseline in which to assess the trees deemed to be significant. However, the permitted baseline provides for the removal of all non-protected trees on site. This appears to be most of the trees with the exception of approximately nine trees in close proximity to the

vehicle access. Therefore it is only these nine trees that can be assessed throughout this report.

Assessment of Effects

[46] The assessment of effects is guided by Section 15.6 of the operative Dunedin City District Plan. Accordingly, assessment is made of the following effects of the proposal:

- Effect of modification;
- Reasons and alternatives;
- Amenity values.

[47] The assessment of effects is guided by Section 7.8.1 of the proposed 2GP. The 2GP was made legally operate in November 2018 and accordingly, assessment is made of the following effects of the proposal:

- Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:
 - There is significant risk to personal/public safety or risk to personal safety that is required to be managed under health and safety legislation
 - The tree poses a substantial risk to a scheduled heritage building or structure
 - There is a moderate to significant risk to buildings
 - The removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities, or
 - Removal of the tree will result in significant positive effects in respect of the efficient use of land.

Reasons and alternatives, risk to personal/public safety, effects on buildings (Assessment Matters 15.6.2 and 7.8.2(1)(c))

[48] Mr Waymouth, on behalf of the applicant, provided his assessment of effects on the basis that all 19 trees to be removed were significant. However, on the balance of probabilities the protection is likely to extend only to the following trees; 01b, 02b, 03, 04, 05c, 06c, 07c (removed), 29c, 08d and 09d (refer to below figure).

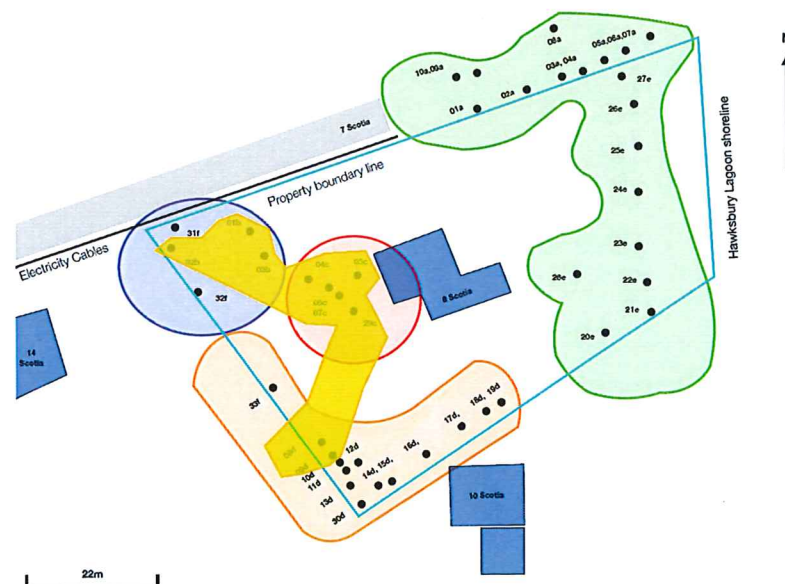


Figure 2: Map showing what is likely group G089 highlighted in yellow

- [49] Mr Waymouth states that the removal of the trees is necessary for health and safety reasons. The current tenants of 8 Scotia Street feel unsafe living beneath the trees. The trees are currently approximately 30m high, and some are situated close to the dwelling. The dwelling sits within a 30m radius of many of the trees on site.
- [50] The eucalyptus trees are currently approximately 30m tall but could reach a height of up to 50 – 70m, which will exacerbate real and perceived health and safety effects with time, according to Mr Waymouth. As the trees grow, the radius of houses located within their falling distance will increase. Mr Waymouth states that the site has optimal growing conditions for the trees, being a flat estuarine site with what is probably silty clay loam soil, and a water table that is 'consistently fairly high'. As such, it appears likely that the eucalypts will continue to grow, especially considering they are healthy with good root plate stability.
- [51] The trees have a low to moderate risk to health and safety when assessed via the ISA method of Tree Risk Assessment, according to Mr Waymouth. However, Mr Waymouth states that in recent circumstances deadwood has fallen twice from the trees to collide with the dwelling, and caused damage to the glassed patio area. He considers that this implies the actual risk may be greater than the ISA methodology. Mr Waymouth states the deadwood fell from the two closest trees to the dwelling, being described as 5c and 29c. While no one was harmed in these instances, the tenants feel more fear living beneath the trees knowing the damage they are able to cause. Note that tree 7c was removed already, and as such the remaining two trees that have shed the dead wood still remain.
- [52] There are 15 trees with a moderate risk rating that the applicant wishes to remove. 12 of the trees are in close proximity to 10 Scotia Street, where a Prefab dwelling was relocated to the site and placed partially under the canopy in 2014. The property owner of that site, Mrs Cooper, has stated in her submission that while she was aware of their significant, protected status when she and her husband moved into the property, they feel there is a risk to their health and safety by living beneath trees of that size. Approximately two of the trees are considered likely to be classified as significant under group G089, and the remaining ten are not. The remaining ten trees to the rear of the site are not believed to be significant and as such can be removed as of right.
- [53] The applicant seeks to remove three trees (1b, 2b and 3b) with a moderate risk rating close to the driveway for the reason that they are too close to the powerlines. These trees are considered most likely to be significant under group G089, as they are the most visible trees from the 2001 STEM assessment and the 2014 Council audit of the trees.
- [54] The applicant wishes to retain the nine eucalypt trees along the border of Hawksbury Lagoon. Mr Waymouth considers these trees to form a contiguous landmark grouping without any perceivable drawbacks in the future. It is likely that these trees do not have significant status.
- [55] The application was forwarded to Council's consultant arborist, Mr Roberts of Roberts Consulting, for comment. Mr Roberts accepts Mr Waymouth's report in general, although considers that Mr Waymouth may have overstated the actual risk of the trees on people and property. However, Mr Roberts does believe there is still sufficient risk on people and property within 8 and 10 Scotia Street to warrant the selected removal of trees that; currently have potential to fail (completely or partially) onto the dwelling or, may fail (completely or partially) as a result of adjacent tree removal.

- [56] It is noted that one tree that was considered to have real potential to fail and fall onto the dwelling has already recently been removed. No other resource consents have been lodged for emergency removal of any of the significant trees. As such, it can be considered that the applicant does not believe any of the trees are an immediate risk to health and safety and/or are in a state of terminal decline. As such, the trees with potential risk to the health and safety of nearby residents and buildings must be identified for possible removal.
- [57] It is important to note that Mr Roberts provided comments on the basis that all eucalyptus trees on the site could be classified as significant trees. However, as described above only approximately eight of the trees are likely to be significant. The 10 trees closest to the border of 10 Scotia Street are likely not significant and as such can be removed as of right. The four trees grouped close to the dwelling (04, 05c, 06c and 29c) can be removed for moderate health and safety reasons, according to Mr Roberts. It must now be ascertained whether or not the removal of these 16 trees will have bearing on the risk rating of the three trees in close proximity to the vehicle access (01b, 02b and 03b).

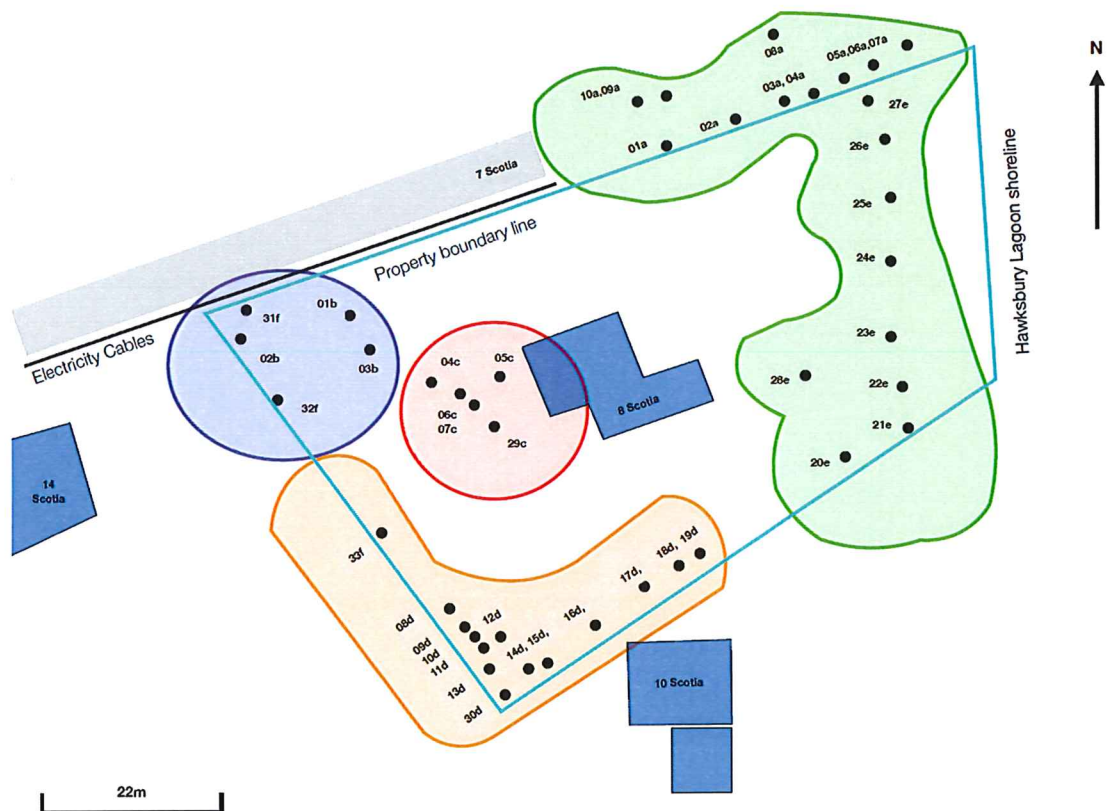


Figure 3: Map showing location of eucalyptus trees on site and on road reserve

- [58] The trees on site are a similar age and as such will have developed together as a group. The trees' growth patterns would have been influenced by one another. The trees situated close to the vehicle access would have been protected from southerly and south easterly winds their entire life, and as such will likely be particularly vulnerable to those wind directions if the other trees on site were to be removed. The pine trees amidst these three eucalyptus trees are able to be removed as of right, a decision which may have bearing on the risk rating of the three trees in close proximity to the powerline.
- [59] Mr Roberts does not agree with Mr Waymouth's belief that the three trees by the powerlines must be removed because of the risk to health and safety and proximity to the powerlines. Mr Roberts believes that pruning will avoid any

adverse effects on the powerlines. These three trees are in my opinion the most prominent to the streetscape, and appear to be somewhat low risk, according to Mr Roberts. As such these three trees could be retained. These trees may also be the trees referred to in Dr Hill's submission, whereby she noted that she regularly saw native birds using the trees for roosting and feeding while walking in the neighbourhood. However, it is vital to determine if these three trees will be a greater health and safety risk given the removal of all of the surrounding large eucalyptus trees, as in, the increase in wind that strikes the trees may create a new hazard. If so, these trees may need to be removed for health and safety reasons to eliminate risk to people living on or near the property, as well as people visiting the lagoon.

- [60] Overall, I have relied on both Mr Waymouth's and Mr Robert's advice to consider that some of the significant trees have a moderate risk to people and property and should be removed for health and safety reasons. I have relied on Mr Robert's advice to consider that not all of the significant trees in group G089 must be removed for these reasons. It must be ascertained whether or not the three trees close to the vehicle access would be a health and safety risk to the public on Scotia Street and visitors to the lagoon, as well as the safety of residents and buildings on the sites at 8, 10 and 14 Scotia Street. If these trees are not considered to be a significant health and safety risk, I believe they should be retained.

Effect of Modification and Amenity Values (Assessment Matters 15.6.1 and 15.6.3)

- [61] The effect of modification in this instance is of removal. As such, effects of the loss of the trees on amenity and biodiversity are assessed. Firstly, however, the trees are reassessed via STEM, to see if they have a value (147 or above) which is worthy of continued inclusion in the schedule.

[62] STEM re-assessment

- [63] Mr Waymouth re-evaluated the STEM score of G089 on 19 November 2018. His re-assessment is split into five groups, rather than a singular group. The key differences when compared to the original STEM assessment are outlined below.

[64] Trees 01b, 02b and 03b

Mr Waymouth provided the three trees in close proximity to the vehicle access with 126 points, compared to the original 156 points. The condition assessment differs from the original STEM score of 2001. Mr Waymouth has provided the trees with a condition assessment lower than the original, with key differences being as follows; the form of these trees is 'average', rather than 'standard/good', the function is 'useful', rather than 'strong/significant'. These differences mean that the condition assessment dropped from 75 points in 2001 to 57. Mr Waymouth also evaluated the amenity values score as lower than the original. The key difference is that Mr Waymouth awarded a 'normal' rating (9 points) compared to the 'significant' rating (15 points). Overall the original score of 81 was decreased to 69 points. These three trees are definitely classified as significant trees.

[65] Trees 04c, 05c, 06c, 07c and 29c

Mr Waymouth provided the five trees in close proximity to the dwelling with a score of 132, compared to the original 156 points. Note that 07c, which had a horizontal crack suggesting imminent failure, has been removed already and as such this may affect the score. The key differences were to function, where Mr Waymouth considers the tree to be 'useful' rather than 'significant/strong',

he also believed role to be 'modest' and climate to be 'normal', rather than 'important' and 'significant', respectively. The remaining four trees are almost certainly classified as significant trees from the 2001 STEM assessment, as these are closest to the trees visible in the photograph, and the original STEM assessment stated the trees formed a group of 10+.

[66] **Trees 8d – 19d**

Mr Waymouth provided the 12 trees along the southern and western border of the property with a score of 108, substantially below the original 156. The key differences are that he considers the form to be average, the vigour and vitality to be 'adequate', the function is 'useful' (rather than significant). He has reduced the stature rating and reduced the role to 'modest' and the climate to 'normal' (rather than significant). Some of these trees may be protected, however this is unclear as they are not able to be seen from the 2001 STEM assessment photograph.

[67] **Trees 20e – 28e and group G088**

Mr Waymouth re-evaluated the nine trees (20e – 28e) on 8 Scotia Street alongside the ten trees on road reserve under group G088. He provided the combined group with a score of 168 points, above the original score and above the pass mark of 147. I do not consider this STEM score to be relevant, because group G088 is not located on the property and should not be considered relevant to the subject site's STEM score. These ten trees are most likely not classified as significant, as they are a clearly disparate group from what is shown in the 2001 STEM assessment photograph.

[68] Overall Mr Waymouth's re-assessment determined that the majority of the trees in his view are not worthy of continued inclusion in the schedule. An exception to that are the nine trees along the border of Hawksbury Reserve which, in a combination with group G088, he considers to have high amenity value and healthy condition. Note that the nine trees on 8 Scotia Street alongside the lagoon are not considered to be classified as significant, and as such they are not protected and can be removed as of right.

[69] The proposal was forwarded to Council's consultant Arborist, Mr Roberts, and Council's Urban Designer, Mr McKinlay, to re-evaluate the STEM assessment as well as provide general comment (Appendix 4). Mr Roberts re-evaluated the then 30 eucalyptus trees again via STEM. He awarded the trees with the score of 150, above the necessary score for inclusion within the schedule and only six points of difference when compared to the original STEM score. The slight decrease in score is due to a reduction in the proximity value from Group 10+ to Parkland. The more common the species in the area, the lower the score. Mr McKinlay agreed with Mr Roberts STEM assessment re-evaluation, and awarded the trees the score of 150.

[70] Effect of tree removal and replanting on Amenity

[71] Mr McKinlay provided his assessment on the amenity values of the tree on the residential areas surrounding 8 Scotia Street and the adjacent Hawksbury Lagoon Reserve. He states that Hawksbury Lagoon forms an important part of the existing landscape context and is recognized as an Area of Significant Biodiversity Value (ASBV). He notes that there is a predominance of non-native plants surrounding the lagoon margin.

[72] Mr McKinlay believes that the removal of the 19 trees will noticeably reduce the extent of the eucalyptus cluster when viewed from surrounding residential properties and from the entrance to Hawksbury Lagoon. He believes the remaining nine will still form a broad backdrop when viewed from these

locations however. Furthermore, approximately ten of these trees can likely be removed as of right, because they are probably not listed as significant.

[73] When the site is viewed from inside the Hawksbury Lagoon reserve there will still be a largely continuous band of trees, approximately 60m in length, and of considerable height. Mr McKinlay believes that the nine lagoon trees combined with the group G088 form a 'notable landmark' and are particularly prominent due to their location in a flat, estuarine landscape. He also believes they act to screen the significant trees that are to be removed when viewed from the lagoon. As such, Mr McKinlay believes these nine trees are the most important trees onsite in relation to the amenity of the area. For this reason, I consider the nine lagoon-side trees to be the most important trees in regards to the amenity of the surrounding area.

[74] Mr McKinlay considers that the proposed removal of 19 eucalyptus trees will have acceptable effects on the broader amenity values of the surrounding area, subject to mitigation replanting and the retention of the nine trees alongside the lagoon. He believes that if the nine eucalyptus trees are to remain by Hawksbury Lagoon then there will continue to be a prominent cluster of tall vegetation at the lagoon edge that can be seen from locations within Waikouaiti, including the reserve. Mr McKinlay believes replanting is necessary for the reason that it will mitigate the diminished size of the eucalyptus stand and will add to the visual interest and diversity of the site and surrounding area. It is noted that approximately ten of these trees are able to be removed as of right, because they are not considered to be significant.

[75] Overall, Mr McKinlay considers that the proposal will have satisfactory, minor adverse effects on the amenity of the area, subject to adequate replanting, and that the nine trees along Hawksbury Lagoon are retained and protected. Mr McKinlay has therefore recommended the following conditions of consent:

'The nine trees in the scheduled tree group G089 bordering the Hawksbury Lagoon which are identified in the GreenTrees Ltd report, prepared by Peter Waymouth, are to be retained and have ongoing protection under the scheduled tree register.'

'A landscape plan for 8 Scotia Street shall be prepared by a qualified landscape architect, which will aim to enhance the privacy of the occupants of 8 Scotia Street and the amenity of the surrounding area. Given the context of the adjacent Hawksbury Lagoon, which is recognised as an ASBV, it is recommended that planting includes eco-sourced, locally appropriate species. Planting shall focus on the peripheral areas of the site where eucalyptus trees have been removed. The planting plan should include the botanical name, common name, numbers, size at planting, planting spacings and mature height of all proposed planting. Planting shall take place within the first growing season following the felling of the eucalyptus.'

[76] I have relied on Mr McKinlay's report and I consider that the proposal will only have palatable effects if the site is replanted in a mixture of natives and non-natives, and the nine lagoon-side trees are protected and retained. If these mitigating measures are to be adopted, then I consider that the proposal will only have minor effects on the long term amenity of the area. However, it is considered that the removal of the trees will have adverse effects on amenity in the short term, prior to the establishment of replanting.

[77] I have adopted one of Mr McKinlay's recommended conditions of consent, being the replanting condition. However, Mr McKinlay provided his recommendation to retain the nine lagoon-side trees on the basis that they

were classified as significant trees. They are not, and as such cannot be protected under group G089 unless the District Plan is changed.

- [78] In order for the nine lagoon-side trees to be protected, a condition of consent must be adopted requiring them to be retained. Section 108 of the Resource Management Act 1991 states the following condition may be included in a resource consent; a condition requiring that services or works, including the protection, planting or replanting of any tree or other vegetation or the protection, restoration, or enhancement of any nature of physical resource, be provided. Section 108AA states that a consent authority must not include a condition in a resource consent for an activity unless a) the applicant for the resource consent agrees to the condition, or b) the condition is directly connected to one of both of the following: (i) an adverse effect of the activity on the environment, or (ii) an applicable district or regional rule, or a natural environmental standard, or c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.
- [79] The removal of the trees is considered to have adverse effects on the environment; however these adverse effects will be reasonably mitigated by native replanting and the retention of the nine lagoon-side trees. There is some doubt as to whether the retention of these nine trees can be considered as direct mitigation of the effects of the removal. It may fall within the ambit of Section 108AA but it is considered prudent to seek that the applicant volunteer a condition of consent regarding the retention of the nine lagoon-side trees. Doing so will have positive effects on the proposal, as it will secure protection of what are considered to be the most important trees on site in regards to amenity and biodiversity until the District Plan can be updated to include them.
- [80] Retaining the three trees in close proximity to the vehicle access will maintain amenity when viewed from the street, and will screen from view the remaining trees to be removed. These trees were not found to be of significant health and safety risk, nor a risk to powerlines. If they are not affected by tree removal surrounding them, then I believe that these trees are able to be retained, thus maintaining amenity to the area without considerable drawbacks to health and safety or powerline maintenance. I believe that retaining these trees is important in regards to maintaining the amenity of the surrounding area, and maintaining the identity of the significant tree group.
- [81] Overall, I consider that the proposed activity will have a minor adverse effect on the amenity of the area if the nine lagoon-side trees are to be retained, the three trees in close proximity to the vehicle access are retained, and the replanting occurs.
- [82] Effects of tree removal on biodiversity values
- [83] The application was forwarded to Council's Biodiversity Advisor, Mr Ewans, for comment on the effect of the trees removal on biodiversity values. Mr Ewans states that the subject site is located within an 'at risk' land environment (with 20 - 30% indigenous cover left), and adjoins Hawksbury Lagoon which is an 'acutely threatened' land environment (with less than 10% of indigenous cover left).
- [84] Mr Ewans states that, while eucalypts are not native, they do provide a food source for native birds, such as tui, bellbird and fantail, and provide a source of nectar seasonally for insects, as well as a roosting spot for native birds. As such, removing the eucalyptus trees would remove these benefits for biodiversity.

- [85] Mr Ewans considers that replanting the area with ecologically appropriate trees will ensure that habitat values are replaced in the medium term as new trees begin to mature, and will likely have positive habitat values for some native bird species by providing a wider range of foods in the longer term. In the meantime, Mr Ewans believes that the remaining nine trees, combined with G088, will retain an onsite food source for native birds. Mr Ewans has provided a list of recommended species for planting, and has commented on Mr Waymouth's suggested list of replanting, stating that some are acceptable plants with the exception of a few non-natives that are pest plant species.
- [86] I have relied on Mr Ewans comments to consider that there will be a less than minor adverse effect on biodiversity, subject to compliance with the recommended condition of consent regarding replanting the area. I consider that planting a range of species, with emphasis on native species, will contribute positively to biodiversity once the replanting is established. It is considered that retaining the nine trees by the lagoon-side will maintain habitat for native wildlife while the replanting is being established. I consider that the retention of the three trees in close proximity to the vehicle access will only enhance this maintenance effect.

Positive Effects

- [87] The proposed activity to fell eight significant trees will result in some positive outcomes relating to amenity, biodiversity and health and safety, provided that replanting occurs.
- [88] The proposal provides an opportunity to protect the most important eucalyptus trees on site, in relation to amenity and biodiversity. The nine lagoon-side trees are likely not protected under group G089 and as such are able to be removed as of right. However, these trees have been considered a notable landmark to the area. This resource consent provides an opportunity for these trees to be protected through a consent condition, and in the process conserve their amenity, historical and biodiversity values for the future. The proposal also offers an opportunity to clarify how many trees are contained within the significant group G089.
- [89] Removing trees 03c, 05c, 06c and 29c, which are situated close to the dwelling, will positively affect the residents of 8 Scotia Street's health and wellbeing, as they will no longer feel stressed living beneath trees they know to shed limbs. The removal of these trees will remove the moderate health and safety risk to them and their property. The removal of the 12 trees at the southern side of the property, two of which are significant, will eliminate any health and safety risk to the occupants of both 8 and 10 Scotia Street. As such, the proposal is considered to positively affect the mental, physical and social health of onsite and nearby occupants.
- [90] The proposal will have long term positive effects to biodiversity. The subject site is located within an 'at risk' land environment with 20 - 30% indigenous cover left. Replanting the area with diverse vegetation, including native vegetation, will contribute to the indigenous cover of the area. The diversity of plants will provide a wider variety of food sources for native wildlife that will be available throughout different times of year, when compared to the current eucalyptus trees.
- [91] I consider that if the trees by the vehicle access can be safely retained, then they will continue to be positive effects on amenity and conservation of the history of the site, without compromising the health and safety of onsite and nearby residents.

Cumulative Effects (Assessment Matter 8.13.13)

- [92] 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".

- [93] 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'.
- [94] There is no potential for cumulative effects in this instance, because 19 eucalyptus trees will remain, and the area that the eucalyptus trees will be removed will be replanted. It is doubtful that the nine trees by Hawksbury Lagoon are protected under the District Plan, and as such in order to avoid cumulative effects it would be beneficial to have these trees protected as a condition of consent.

Effects Assessment Conclusion

- [95] After considering the likely effects of this proposal above, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor, in part. I consider that removing the three trees close to the vehicle access (01b, 02b and 03b) will have more than minor adverse effects on the amenity of the area and likely do not require removal for health and safety reasons. As such, I consider that the effects of this proposal are only acceptable if; a) nine lagoon-side trees will be maintained, b) the area of tree removal will be replanted, and (c) if it is safe to do so, then the three most prominent significant trees able to be viewed from the street and public reserve are retained.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [96] 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.
- [97] 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))

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

Dunedin City District Plan

- [99] The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

Sustainability Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 15.2.1 Maintain and enhance the amenity and environmental quality of the City by encouraging the conservation and planting of trees.	Section 15 of the District Plan states that trees contribute positively towards amenity and the quality of the environment through the city. The eucalypts are large trees that are beneficial to local biodiversity and amenity of the area. Removing the trees will therefore adversely affect the quality of the environment and amenity in the area in the short term. However, if replanting were to occur then the effects on biodiversity will not be compromised in the medium to long term. Replanting will allow the proposal to be consistent with these objectives and policies. The applicant recognizes the importance of trees on amenity and environmental quality, and aims to replant the area with native and non-native species. The proposal is therefore considered to be consistent with these objectives and policies.
Policy 415.3.1 Ensure that landowners and developers are aware of the environmental benefits of trees and encourage them to conserve trees and undertake new plantings whenever possible.	
Objective 415.2.2 Protect Dunedin's most significant trees	Council's consultant arborist, Council's landscape architect and Council's biodiversity advisor all consider the most significant trees on the site to be the nine alongside Hawksbury Lagoon, which are to be retained. It is doubtful these trees have significant status however. The advisors state that the trees to be removed significantly contribute to the amenity and biodiversity of the area, but mitigation replanting will contribute to amenity and environmental quality. The immediate effects of the proposal will have an adverse effect on surrounding amenity and environmental quality, and as such the proposal is considered to be inconsistent with these objectives and policies.
Policy 15.3.2 Identify and protect trees that make a significant contribution towards amenity and environmental quality	

Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 8.2.1 Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied and mitigated.	The eucalyptus trees contribute to the residential character of the area and are healthy specimens. Most of the trees are in good health and contribute positively to the amenity of the area. Removing these trees will adversely affect the character of the area. The subject site and 10 Scotia Street will have improved access to sunlight in the short term, prior to the establishment of replanting. The proposal will be inconsistent with the objectives and policies of the residential zone, due to the adverse amenity effects of removing the significant trees.
Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	

Sustainability Section

Objective/Policy	Is the proposal Consistent with or contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	The stand of eucalyptus trees is healthy and provides a sense of scale and setting to the surrounding streetscape. The trees are known to provide a landmark feature in a flat
Policy 4.3.1	

Maintain and enhance amenity values.	estuarine landscape within the township of Waikouaiti. Removal of the trees would adversely affect the broad scale amenity of the area in the short term. However, proposed replanting will successfully mitigate this by gradually forming a new, diverse landmark that contributes to a greater extent to the biodiversity of the area. The eucalyptus trees are living organisms that contribute positively to the amenity of Dunedin. They were possibly established as part of the historic homestead and as such have an identity. Removing the trees would therefore be inconsistent to these objectives and policies. As such, overall, the proposal is inconsistent with these objectives and policies. However, retaining the nine remaining trees alongside Hawksbury Lagoon will maintain that significance, and replanting with diverse vegetation will improve the amenity of the area in the long term.
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Proposed 2GP

[100] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The following 2GP objectives and policies were considered to be relevant to this application:

	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 eucalyptus trees are healthy specimens and may have been planted to mark the end of World War II. As such they are part of the history of the neighbourhood. Nine of these trees will be retained, which will help to preserve some of that history. The proposal is consistent with maintaining the history of the neighbourhood, to a degree.
Policy 7.2.1.1	Enable the removal of a scheduled tree where they are certified as being 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	The tree has a moderate health and safety risk to the public and property. Removing the trees will eliminate that risk. However, the trees are not considered to be an immediate risk, nor are they in terminal decline. As such the proposal is considered to be inconsistent with the objectives and policies surrounding significant risk to health and safety.
Policy 7.2.1.2	Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1 unless: - There is a significant risk to personal/public safety or property; or - The tree is shading existing residential buildings to the point that access to sunlight is significantly	The trees shade existing dwellings, one of which was in place prior to the establishment of the trees and one of which that was constructed in 2014. Removing the trees will reduce the amount of shade to these properties, although it is not clear whether sunlight is significantly compromised. The proposal is therefore inconsistent with Policy 7.2.1.2.

	compromised; or • The removal of the tree is necessary to avoid significant adverse effects on public infrastructure; and • These adverse effects cannot be reasonably mitigated through pruning and the effects outweigh the loss of amenity from the removal of the tree	The tree is not located in close proximity to public infrastructure. The moderate risk to health and safety cannot be adequately mitigated through pruning. The proposal is consistent with the policy surrounding mitigation. Overall, I would consider removing the tree to be inconsistent to the objectives and policies of the Trees Section.
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Residential Section

	Objective/Policy	Is the proposal consistent with or contrary to the objective?
Objective 15.2.3	Activities in residential zones maintain a good level of amenity on surrounding properties and public spaces.	Removing the significant trees will adversely affect the amenity of surrounding properties. The trees are approximately 60 years old and are potentially of historic value. Replanting the area will mitigate the issue, however this will occur only in the long term once the trees are established. Amenity is considered to be maintained on the adjoining public space, especially when viewed from the lagoon. Amenity is not considered to be maintained from public road on Scotia Street however, as the tree removal will be noticeable directly in front of the site. Removing the trees could be considered to increase the level of amenity to the subject site and adjoining sites that are influenced by shading and leaf fall. In this regard, the proposal could be considered to be consistent with Objective 15.2.3. Replanting the area with more evergreens will reduce the amount of leaf fall and reduce nuisance effects. Overall, I would consider that the proposal will adversely affect the amenity of the surrounding area. The nine remaining trees will act to maintain amenity to surrounding public space. Replanting will mitigate the adverse effect once established. Overall, I consider that the proposal to be inconsistent with this objective.

Overall Objectives and Policies Assessment

[102] Having regard to the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is inconsistent with those provisions.

- [103] The activity status of the proposal in the Proposed Plan is non-complying. The 2GP rules are not operative in this instance because there has been a relevant appeal on the activity status of the removal of significant trees. Given that the rules are not yet fully operative, the objectives and policies relevant to the tree removal in the Proposed Plan are given reduced weight in regards to the assessment of the activity against the Plan. The Proposed Plan Objectives and Policies are more refined and acknowledge the requirement at times to remove Scheduled Trees for a number of reasons. As a result, I have given both plans equal weight.
- [104] The objectives and policies assessment lends support to the partial granting of this proposal. The trees that are deemed to be a health and safety issue are considered to be consistent with these objectives and policies. Trees that are not considered to be a significant health and safety threat are not considered to be consistent with these objectives and policies and as such this lends support to their retention.

Assessment of Regional Policy Statements (Section 104(1)(b)(v))

- [105] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. Identify relevant chapters e.g. Chapter 5: Land is relevant in that it seeks to promote sustainable management of Otago's land resources.
- [106] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. The decisions for the Proposed RPS were released in October 2016. The operative RPS remains in force until the review is completed. Local authorities must have regard to both the operative RPS and the proposed RPS when preparing and changing regional or district plans. Given its regional focus, the regional policy statement does not have a great bearing and has little relevance to the current application.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [107] It is considered that there is comprehensive coverage within the operative and proposed District Plans. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104D

- [108] 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. The application is considered to have no more than minor adverse effects, subject to conditions of consent.
- [109] In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of both the Dunedin City District Plan and the proposed 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 inconsistent, but not contrary to, the relevant objectives and policies of the Residential Zone and Trees Section of both the operative and proposed plans. The proposed development is

therefore considered to also satisfy the second 'gateway' test outlined by Section 104D.

- [110] 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.

Section 104

- [111] 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 proposed development overall will be acceptable given appropriate mitigation strategies and retention of 12 of the eucalyptus trees (nine alongside the lagoon, and three alongside the vehicle access).
- [112] 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. It is noted that Mr Roberts, Mr McKinlay and Mr Ewans have all assessed the proposal on the basis that the nine trees along Hawksbury Lagoon will be retained. However, it does appear likely that these trees do not have significant status under either the operative or proposed district plans. As such, a method of mitigation would be for the applicant to agree to a condition of consent to retain and protect these trees. Doing so will ensure that the amenity and biodiversity of the area will not be compromised, nor will the integrity of both district plans, and the history of the trees will be retained.
- [113] 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 be inconsistent to the key objectives and policies relating to both the Dunedin City District Plan and the Proposed 2GP.
- [114] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. The regional policy statement does not have a great bearing on the current application. I do not consider it relevant for my assessment of the proposal.

Other Matters

- [115] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [116] Case law, *Butterworth, C v Auckland City Council* (A090/2009) demonstrated that Council was incorrect to base too much emphasis on the retention of the tree when compared to other adverse effects caused by the tree. In paragraph 14 of the decision, Judge Newhook stated that the provisions of the district plan are strongly supportive of the retention of trees of greater than certain dimensions, and contain nothing of the flavour of matters raised by Part 2 of the Act, for instance, the health and safety of people, and social and economic wellbeing.
- [117] The appellant won the appeal to allow removal of the tree due to the dominance of the tree on a residential site. In this case the subject site is a large site, however the trees in close proximity to the dwelling could be seen as dominating the site. The trees shed branches and caused damage to the

dwelling, and the occupants have expressed anxiety in relation to the safety of these trees.

[118] In this regard, I do not consider that the proposed activity represents a challenge to the integrity of the Dunedin City District Plan, nor the Proposed Second Generation District Plan (2GP). The Proposed 2GP holds greater emphasis on Part 2 matters within the objectives and policies, when compared to the operative District Plan and must be considered throughout this report. As it is a relatively unique and confined proposal, I consider that its potential approval would be unlikely to undermine public confidence in the plan's provisions.

[119] For the above reasons, I consider that approval of the proposal will not undermine the integrity of the Plan as the activity will produce only localised and minor effects. I therefore do not consider that the Committee needs to be concerned about the potential for an undesirable precedent to be set in this regard.

CONCLUSION

[120] Having regard to the above assessment, I recommend that the application be granted in part subject to the recommended conditions of consent. The removal of all of the significant trees (being approximately nine trees) is not considered satisfactory for the reasons that a) the trees closest to the vehicle access provide a level of amenity to the area and will act to screen the removal of the other trees, and b) the trees closest to the vehicle access are presently not considered to be a significant threat to health and safety. The removal of the remaining six (or so) significant healthy eucalyptus trees are able to be removed due to health and safety reasons, whereby the moderate risk to health and safety caused by the eucalyptus trees will be eliminated. The removal of these trees is satisfactory as they are not considered to greatly contribute to the amenity of the area to an extent that cannot be remedied via replanting, and the maintenance of other more prominent and valuable eucalyptus trees on site.

[121] In the medium to long term, the removal of these six or so significant trees may have positive effects on biodiversity, as they are located in an area of biodiversity that is 'at risk', meaning there is only 20 – 30% indigenous cover left. By replanting the area with native plants this will improve the habitat for local native birds and insects and increase the percentage of indigenous species in the area. By incorporating a variety of species into the planting, native birds will benefit from a food source that is available at different times of year, as well as a greater variety of roosting spots.

[122] The neighbourhood history of the trees will be retained through the remaining nine trees bordering Hawksbury Lagoon and the three by the vehicle access. Nuisance effects such as shading and leaf litter will be partially remedied by the removal of the six significant trees. After weighing both the positive and negative effects arising from the removal of approximately six significant eucalyptus trees, I consider that overall the proposal will have a positive effect on the health and safety of nearby residents, and the amenity and biodiversity of the area in the long term.

RECOMMENDATION

[123] LUC-2019-739

*Pursuant to section 34(1) and 104B, and after having regard to Part II Matters, and section 104 of the Resource Management Act 1991, the Dunedin City Council **grants, in part** consent to the **non-complying activity** being*

the removal of six significant eucalyptus trees that form part of G089 in Schedule 25.3 of the Operative Dunedin City District Plan as a significant group of trees located at 8 Scotia Street, Waikouaiti on the site legally described as Lot 10 Block IV Deeds 51, Lot 11 Block IV Deeds 51, Lot 52 Block IV Deeds 51, Lot 53 Block IV Deeds 51 (Computer Freehold Register OT237/210).

1. *The activity shall be carried out generally in accordance with the information in the application dated 4 December 2018, except where modified by the following conditions of consent.*
2. *Tree removal of 04c, 05c, 06c, 29c, 08d and 09d must be undertaken by a qualified arborist in accordance with recognised arboricultural practice.*
3. *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 G089 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.*
4. *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

No work is undertaken on Sundays or Public Holidays nor between 8.00pm to 7.30am Weekdays or Saturdays.

5. *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.*
6. *The applicant must submit a replanting plan prepared by a suitably qualified landscape architect for approval by the Resource Consent Manager prior to any tree removal or pruning authorised by this consent being undertaken. The plan must focus on the peripheral areas where the eucalyptus trees are to be removed. The planting plan must include the botanical name, numbers, size at planting, planting spacings and the mature height of all proposed planting. The purpose of the planting plan is to enhance the privacy of the occupants at 8 Scotia Street and to enhance the long-term amenity of the area.*
7. *The planting must include eco-sourced, locally appropriate species and must include, but not be restricted to, species listed within Council's Biodiversity Advisor's recommendations attached as Appendix 4. Preference must be given to those species also recommended by Mr McKinlay (Appendix 4). The purpose of this is to ensure that the trees planted will be most locally appropriate for biodiversity, and to enhance amenity of the area in the long-term.*
8. *Planting must take place as soon as practicable after the removal of the eucalyptus trees and/or within the first growing season.*
9. *The removed eucalyptus trees must not be allowed to regenerate from the stumps.*

10. *The nine trees (numbered as 20e – 28e) alongside Hawksbury Lagoon must be retained and protected. The purpose of this condition is to maintain the trees' contribution to the history, amenity and biodiversity of the area, especially whilst the replanting is being established.*
11. *The three trees in close proximity to the vehicle access (being numbered as 01b, 02b and 03b) must be retained and protected. The purpose of this condition is to maintain the history and identity of the tree group, whilst screening the tree removal from site of the street and Hawksbury Lagoon.*

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. 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 responsibility of any party exercising this consent to comply with any conditions imposed on the 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. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

REASONS FOR RECOMMENDATION

- [124] If the application is approved in part, and provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity can be adequately mitigated and will be no more than minor.
- [125] The proposal is considered to be inconsistent with the key relevant objectives and policies of both the Dunedin City District Plan and the Proposed 2GP, however the proposal is able to be successfully mitigated through conditions of consent.
- [126] The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago.
- [127] The proposal affords an opportunity to protect trees along the lagoon edge that are on the balance of probabilities not currently protected. These trees are considered to be more important in regards to amenity and biodiversity, when compared to the trees identified in G089. The replanting will contribute to biodiversity values in the long-term by creating an area of diverse native habitat. These positive effects are an important consideration in the recommendation to grant this proposal in part.
- [128] Overall, the proposed development has been assessed as not being likely to give rise to adverse effects on those elements of the Residential zone, that the Dunedin City District Plan seeks to protect, nor the elements of the Township and Settlement Zone that the Proposed 2GP seeks to protect.

Report prepared by:



Lily Burrows
Planner

19 March 2019
Date

Report checked by:



John Sule
Senior Planner

19 March 2019
Date