

1 June 2016

K D Casey
116 Mornington Road
Dunedin 9011

Dear Kevin

RESOURCE CONSENT APPLICATION: LUC-2016-81
116 MORNINGTON ROAD
DUNEDIN

INTRODUCTION

- [1] Your application to remove a scheduled New Zealand Beech tree (T808) was processed on a notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991 (the Act). No submitters wished to be heard in respect of the application and therefore, pursuant to Section 100 of the Resource Management Act 1991, the application was considered by the Resource Consents Manager, under delegated authority, on 1 June 2016.
- [2] I advise that the Council has **granted** consent to the application. The decision is outlined below, and the decision certificate is attached to this letter.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to remove a New Zealand Beech Tree listed as T808 in the Schedule of Protected Trees (Schedule 25.3) of the Dunedin City District Plan. The Applicant has indicated that Delta will carry out the works. If granted, the Applicant has signalled that they would have the stump ground and the remaining roots dug out before landscaping which will include a smaller non-invasive tree or larger shrub in the location of the old tree. Additional landscaping treatments are proposed in the form of two substantial gateposts and a wrought iron fence.
- [4] The Applicant wishes to remove the tree for the following reasons:
- *Property damage due to the trees extensive root system.*

Roots go under the house and are likely responsible for damage to the bay window brick work. The footpath is being pushed up and the foul sewer pipe which traverses the root system, is only two metres from the trunk. They are unsure whether the roots are shifting the pipe. A Council water main runs along the grass beside the footpath and roots could be seeking it out.

- *Pedestrian Safety*

The tree is damaging the footpath where pedestrians walk. Cracking is evident and creating an uneven surface.

- *Interference with high voltage lines.*

The upper branches are interfering with high voltage lines and have to be trimmed intermittently.

- *Constraining Applicants ability to fence and landscape the property.*

When they purchased the property the remains of an old brick fence were evident as being pushed over by the root system. The trees aggressive root system means is impossible to erect any fence to replace the old brick fence. Grass will not grow under the tree.

- *Tree rot in a large branch – safety concerns.*

If a large branch fails the house would be damaged. Visual tree rot is evident on the tree.

- *Tree Aesthetic*

The aesthetic balance of the tree is being compromised by the pruning by Delta. The tree comprises of two trunks which are both forked. As the tree does not having one solid trunk, the Applicant thinks that the pruning being undertaken further reduces the tree aesthetic.

- *Tree Relocation*

The tree cannot be relocated due to its size.

[5] The Applicant's has engaged an Arborist, DM Holdings 2005 Ltd who has provided comment on the state of the tree and the environmental constraints. The Arborist has indicated there are two viable options: significant crown reduction, to balance the 3.5-4m pruning from power lines; or complete removal. The Arborist recommendation is for complete removal, given the extent of work which must occur to meet the power line regulations and the impact that this has on the overall health and aesthetic value of the tree and other residual issues the tree is causing.

[6] A copy of the application, photographs of the tree and existing damage on the property including a report by an Independent Arborist, DM Holdings 2005 Ltd in support of the removal of the tree is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

[7] The site is located on the western side of Mornington Road. Both sides of the road are developed with residential dwellings and with established trees and plantings.

[8] The protected tree (T808) is located at the front boundary of the property abutting the driveway to the property. The foliage of the tree occupies most of the front yard on the southern side of the driveway. Other plants are growing at the boundary including a more substantial tree on the northern side of the driveway. The property contains no fence at the boundary, a residential dwelling on the southern side of the driveway setback approximately 4.0m from the front boundary. A large rectangular garage adjoins the northern side of the driveway opposite the dwelling. Additional

ancillary buildings are located at the end of the driveway and the remainder of the site contains a number of trees and other vegetation. A wide road reserve adjoins the pedestrian walkway. 11KVA electricity lines run parallel to the street boundary of the site and are located immediately adjacent to the protected tree.

- [9] The site is legally described as Lot 2 DP 365150 held in Computer Freehold Register 264323 and comprises of 1.768ha in area.

HISTORY OF THE TREE

- [10] The dwelling was erected on the site in 1933. Garaging opposite the dwelling was erected in 1991.
- [11] A boundary adjustment combining Lot 1 (114 Mornington Road) and Lot 2 (116 Mornington Road) was granted on the 28th of November 2005 (RMA20050988).
- [12] A former STEM assessment was completed on 22 March 2001 achieving a total point score of 150.
- [13] An Instant Tree Consent (LUC-2015-534) was applied for in November 2015 for pruning of the tree back from the power line and was granted on the 14th of December 2015.

ACTIVITY STATUS

- [14] Dunedin currently has two district plans: the Operative Dunedin City District Plan (the Operative Plan), and the Proposed Second Generation Dunedin City District Plan (the Proposed Plan). Until the Proposed Plan 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.
- [15] 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 the Operative Plan in place at the time of the decision that must be had regard to when the application is assessed.

Dunedin City District Plan

- [16] The subject site is zoned **Residential 1** in the Dunedin City District Plan. Mornington road is classified as a **Collector Road** in the District Plan Roading Hierarchy. The site is not located within any designated area or hazard known areas.

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. The schedule of trees is deemed significant to warrant specific protection. All trees in the schedule were assessed using the STEM (Standard Tree Evaluation Method) system. This method has three distinct components, being the 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.

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.

The points received for each factor are calculated. 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. The tree has a total score of 138 points in the STEM assessment. The highest portion of the score is attributed to the Function, Stature and Proximity with the proximity category scoring the highest possible score of 27 points for a solitary tree. At the time of assessment for inclusion in the Schedule, the tree was considered to be Significant.

Under Rule 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 is a **discretionary activity** (unrestricted).

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

- [17] The subject site is zoned **General Residential 2**. The New Zealand Beech Tree is identified as a Schedule Tree (T808). The site is identified in an **Infrastructure Constraint Area**. Part of the rear of the site is identified as having **High Class Soils**.
- [18] Removal of a scheduled tree is a **non-complying activity** under Rule 7.3.2 of the Proposed 2GP.
- [19] The Proposed 2GP was notified on 26 September 2015, and some 2GP rules had immediate legal effect from this date. In this instance, the application was lodged on 4 March 2016 and the above relevant rule provision was not in effect at that time.

Plan Status

- [20] Overall, application is considered as a **Discretionary Activity** under the Operative Plan.

WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS

- [21] No written approvals were submitted with the application.
- [22] The application was publicly notified in the Otago Daily Times on 6 April 2016.
- [23] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on 5 May 2016.
- [24] Three submissions were received by the close of the submission period. All submissions were in support.
- [25] 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?
R & L Miller (35 Tunnel Beach Road)	Support	Supports Arborist report. Accepts research has been done – recommendation makes sense.	No
Protect Private Ownership of Trees Society (POTS –Jim Moffat)	Support	Considers the tree is completely unsuitable for the site given its grossly overgrown state i.e. large branches over the pavement; proximity to overhead electric wires; three trunks not just T808; root spread is a pedestrian hazard; Stem assessment is out of date; shading neighbouring houses; Variation II List of trees show T808 is a Wellingtonia not a Beech; T808 has not been removed from the 2GP Schedule.	Yes
Paul Arthur (115 Morningside Road)	Support	Would like the tree removed as it blocks the afternoon sun to their house and is a hazard so close to the high voltage power lines.	No

Note: The POTS comment about the tree being formerly called a Wellingtonia could not be found on a search of historical records relating to the tree on this site. All current arborist reports refer to the tree as a New Zealand Beech tree.

Section 100 - Requirement to Hold a hearing

- [26] As it is recommended in the assessment below that resource consent be granted to the activity, no submissions in opposition were received in respect of the application, the submitter that requested to be heard has been contacted and no longer wishes to be heard, and the applicant does not wish to be heard, it is considered that there is no need for a hearing of the application (section 100 of the Act). Accordingly, the Manager Resource Consents, in consultation with the Chairperson of the Consents Hearings Committee, determined that a hearing is not necessary and that the decision can be made.

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [27] 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.

- [28] 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.
- [29] There is no assistance provided by the baseline in understanding the effects of the activity. Therefore, it is not considered appropriate to apply the permitted baseline to the application.
- [30] The assessment of effects is guided by the assessment matters in Sections 8.13 (Residential) and 15.6 (Trees) of the Dunedin City District Plan considered relevant to the proposed activity. Accordingly, assessment is made of the following effects of the proposal:
- Effect of Modification
 - Reasons and Alternatives
 - Amenity Values
 - Positive Effects

Effect of Modification/ Reasons for Alternatives

- [31] The Applicant's statements regarding the health and quality of the tree in the application are tested somewhat by the expert review in the Council's Consultant Arborist report by Peter Waymouth of Green Trees Ltd. Mr Waymouth suggests that the pruning regime considered by the Applicants in their application in excess of the requirements, as shown by the standard Aurora Lines Ltd tree trimming guidelines. Mr Waymouth has noted that the growth rate on the tree is now low to the point where increase in canopy height and spread is nominal. This would suggest that a lighter pruning regime could better support maintenance and overall appearance of the tree.
- [32] Mr Waymouth considers the tree to be in 'very good overall health and structurally sound'. Mr Waymouth notes that the wound-wood response (from a previous branch tear which has occurred) is sound. The rot pockets are well compartmentalised (contained) – the surrounding wound-wood response being of higher overall strength to compensate the loss of wood mass due to decay pockets. Mr Waymouth advises that this is a common tree response (internal tree defence) to major wounds resulting from pruning. Mr Waymouth's comments are contrary to the Applicant's Arborist comments about the current tree state. DM Holdings 2005 Ltd arborist, Seth McPhee, has indicated that the tree appears to be only in 'reasonable health' and that 'the union between the stems has been holding water and there will be rotting at this point'. Mr McPhee also believes that 'There is likely to be more rot in the branch than what is visually evident'.
- [33] With respect to the damage being undertaken to underground infrastructure and the dwelling, Mr Waymouth suggests that the depression in the drive beneath the canopy is unlikely to be causing any interference with well-sealed plastic drains (laid recently), which do not leak. Further, when considering the possibility of the tree causing uplift of house foundations and the cracking of brickwork joints, Mr Waymouth has indicated that there is no reason for the tree to be seeking out water under the house foundations, because this is not where the nutrients and water are mainly available.

- [34] Despite these anomalies above, all parties acknowledge that there are conflicts for this tree associated with the location of electric wires, footpath upheaval and potential further conflicts with foundations and drains.
- [35] The applicant has given due consideration to reasonable alternatives to removal of the whole tree. They have owned the property for a number of years and have managed the tree up until now by pruning. They have also refrained from erecting a fence, accepting that the tree would damage anything erected. The Applicant's independent Arborist, Mr McPhee considers that pruning back 3.5-4.0m from the power lines will leave the tree 'significantly imbalanced in the crown'. Mr Waymouth suggests that a lesser pruning of the tree may meet Delta requirements for setback off the power lines, and have less of an impact on the overall shape of the tree.

Amenity Values

- [36] The Council's Landscape Architect, Mr Knox recognises that the tree is still important in terms of the considerable 'softening visual effect for drivers along Mornington Road and the 'natural character element which offsets the less natural impact of built dwellings along the road'. Despite this, Mr Knox concludes that following an assessment of the health and quality of the tree (updated STEM assessment), the tree fails to attain the required score which determines whether or not it should be scheduled. The required score is 147 and the recent score was 138. An earlier STEM assessment completed in 2001 scores the tree at 150, which shows the tree has declined only in recent years. Therefore, while making an important local contribution to the amenity of the streetscape, the quality of the tree itself is not significant enough to warrant retention as a protected tree. This has important ramifications for how the removal of the tree is to be assessed. Since, without the listing as a protected tree, the tree could be removed without the need for resource consent.
- [37] When considering whether the tree could improve in its quality over time, I note that none of the experts have mentioned this possibility. Mr Waymouth does however, acknowledge that the tree could be expected to live for another 80+ years. The potential for the tree to improve in quality and therefore, improve on the next STEM assessment, is hindered by the ongoing need to prune the tree away from the power lines and the characteristics of the tree i.e. the forked trunks of the tree, which together provide constant barriers to an overall improvement in the status of the tree.
- [38] When considering the impact that the removal of the tree would have, Mr Knox notes that there would be a negative impact, however, other nearby vegetation (including vegetation and trees on the subject property) would continue to assist with maintaining residential amenity values.

Positive Effects

- [39] It is clear that there are positive effects to consider with the removal of the tree. As outlined by the applicant, these include the ability to erect a gate and fencing along the boundary again without interference by major tree roots. The restoration of the grassed area in the front yard. The increase in sunlight for the submitter on the opposite side of the road. A possible reduction in deterioration of brickwork and interference with underground infrastructure in the event that the roots are causing movement. Additionally, there will be some relief from the ongoing worry associated with the hazard created by trees growing in close proximity to the high voltage power lines, and the ongoing need to prune those branches. Pedestrians along the walkway will not incur difficulties with ruptured pavement past this property resulting in reduced ongoing costs associated with the Council maintenance of the walkway.

Proposed 2GP

[40] In this instance, there are no applicable assessment rules.

Effects Assessment Conclusion

[41] There was no community support for the retention of the tree.

[42] After considering the likely effects of this proposal above, and the quality of the tree, I consider the adverse effects of the proposal are not more than minor. Conditions of consent will ensure that the adverse effects resulting from the process of removing the tree will be appropriately mitigated.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the Dunedin City District Plan (section 104(1)(b)(vi))

[43] Section 104(1)(b)(vi) of the Act requires the Council to have regard to any relevant provisions of the Dunedin City District Plan and the proposed 2GP.

[44] 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 4.2.1 Enhance the amenity values of Dunedin. Policy 4.3.1 Maintain and enhance amenity values.	The proposal is Inconsistent with this objective and policy. On a localised scale, I consider that the removal of will temporarily reduce amenity however, only in the short term, the amenity values of the immediate neighbourhood will return with the growth of other trees in the vicinity. While the Council's Landscape Architect comments that 'there would be a moderate reduction in the value of visual amenity if the tree were to be removed'. He acknowledges that 'there are other trees which provide a similar 'softening' and natural impact'.
Objective 4.2.4 Ensure that significant natural and physical resources are appropriately protected. Policy 4.3.4 Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	The proposal is for the removal of one of Dunedin's Scheduled Trees. The tree is a sizeable tree of 'very good health and overall structurally sound' (Council's Consultant Arborist – Green Trees Ltd) making a 'valuable addition to the Mornington Road streetscape' (Council's Landscape Architect), however, its diminished values mean that its importance as a tree for protection has reduced. Therefore, while the proposal is inconsistent with this objective and policy, the tree is now at odds with the criteria by which trees are selected for initial protection. None of the expert reports have indicated that the tree could return to its original STEM assessment with time.

Trees 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. Policy 15.3.1 Ensure that landowners and developers are aware of the environmental benefits of trees and encourage them to conserve the trees and undertake new plantings whenever possible.	The proposal is inconsistent with this objective and policy.
Objective 15.2.2 Protect Dunedin's most significant trees. 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. Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	The proposal is consistent with this objective and policy. The removal of the tree will result in a temporary reduction in visual amenity values but will enhance the overall amenity values of the 116 Mornington Road property because the applicant is not limited in making alternative improvements to the frontage (a new gated entranceway) without the possibility of the tree roots interfering and they can reclaim an area of their front lawn which has become woody and dry. Additionally, the removal of the tree will potentially bring an increase in sunlight and daylight to the property and the property across the road (refer submissions).

Proposed 2GP

- [45] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The proposal is considered to be **contrary** with the following 2GP objectives and policies:
- [46] **Objective 7.2.1 and Policies 7.2.1.1, 7.2.1.2, 7.2.1.3 and 7.2.1.4 (Scheduled Trees)** seek to maintain the contribution made by significant trees to the visual landscape and history of neighbourhoods. Policy 7.2.1.1 only allows for the removal of a scheduled tree where it is dead or in terminal decline and none of the experts has indicated that the subject tree meets these criteria. Policy 7.2.1.1 also allows for further scenarios where the removal of a scheduled tree could be contemplated for example:

- the tree has become a significant risk to personal/public safety or property;
- the tree results in significant shading which significantly compromises access to sunlight;
- the adverse effects cannot be reasonably mitigated through pruning and the effects outweigh the loss of amenity from the removal of the tree.

Modification of a scheduled tree is contemplated by Policy 7.2.1.3, and could be supported by all parties if it would address most of the issues and concerns raised by the Applicant with managing this tree. Instead, it would only temporarily address the concerns with proximity to power lines, and may result in modification of a tree which may further undermine the values that it currently has. Notwithstanding this, I accept that the Council's Consultant Arborist has visually demonstrated a remedial pruning regime which would allow space between the tree and power lines while having least effect on the overall shape of the tree. Overall, the proposal is considered to be **contrary** to this objective and these policies.

- [47] **Objective 15.2.2 and Policy 15.2.2.1 (Residential Zones)**, seek to ensure that residential activities, development, and subdivision activities provide high quality on-site amenity for residents. The proposal is considered to be **inconsistent** with this objective. The removal of the tree will have a noticeable negative impact on the amenity of this site and streetscape, however, as recognised by the Council's Landscape Architect, 'the presence of other nearby vegetation will continue to assist with maintaining the natural character'.

Objective 15.2.3 and Policy 15.2.3.1 (Residential Zones), seek to ensure that activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces. The proposal is considered to be **inconsistent** with this objective. While the tree is a valuable addition to the Mornington Road streetscape, the tree is unlikely to be critical to maintaining amenity values particularly appreciated by the community, given that it is but one of many trees on the property and one of several at the front of the property in what is a mature and quite green property frontage. The loss of the tree will have an immediate negative impact, however, its loss may not be noticed beyond those who have been affected by the problems.

- [48] Having regard to the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is **contrary** to those provisions.
- [49] As the Proposed 2GP is not far through the submission and decision-making process, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed 2GP. Further, it is important to recognise that the Council's Landscape Architect has recommended that the tree no longer warrants inclusion on Schedule 25.3 and should not be transferred onto the 2GP Schedule. In light of this, the Panel can give little weight to the Proposed 2GP objectives and policies.

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

- [50] 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. Given its regional focus, the regional policy statement does not have a great bearing on the current application.

However, Chapter 5: Land is relevant in that it seeks to promote sustainable management of Otago's land resources. The proposal is considered to be consistent with the relevant objectives and policies of the statement.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [51] When considering an application for resource consent, an assessment of the proposal is to be made subject to the matters outlined in Part 2 of the Act. This includes the ability of the proposal to meet the purpose of the Act, which is to promote the sustainable management of natural and physical resources. Furthermore, the matters of national importance in section 6 must be recognised and provided for, and particular regard must be had to the matters listed in section 7.
- [52] Of particular relevance to this application are sections 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment", 6(b) "the protection of outstanding natural features", 7(c) "the maintenance and enhancement of amenity values" and 7(f) "the maintenance and enhancement of the quality of the environment".
- [53] As discussed in the assessment of effects above, the proposed development is not considered to create adverse effects on the environment that are more than minor when considered in the context of the receiving environment and the provisions of the Dunedin City District Plan and the Proposed 2GP.
- [54] I therefore consider that the proposal will avoid, remedy or mitigate adverse effects to a degree that satisfies the provisions of the Dunedin City District Plan and the Proposed Plan (2GP). While some of the problems encountered by the applicant are not considered significant, the health and safety of the occupants of the house and their neighbours, and their social and economic wellbeing must be considered under Part 2. When considering the overall proposal, and in considering the positive effects that would result for the subject site and the Applicants, the proposed development would be consistent with the purpose of the Act outlined in section 5 of that legislation.
- [55] Having regard to Section 6(b), the subject tree is recognised as a significant tree through its STEM rating score, and it is a natural feature of Dunedin City. However, a reduced STEM rating score which falls below the STEM rating necessary to be classified as a Scheduled Tree, indicates the tree does not warrant protection as an 'outstanding' tree any longer. The proposal does not therefore challenge the direction of Section 6 which seeks to achieve the protection of outstanding natural features from inappropriate use and development.
- [56] Having regard to section 7(c) and whether particular regard has been had to the maintenance and enhancement of amenity values, it is important to reflect on the comments of the Council's Landscape Architect, Barry Knox who concurs that the tree adds a 'softening visual effect for drivers travelling along Mornington Road'. Mr Knox also states that 'the tree provides a natural character element which offsets the impact of built dwellings along the road'. However, when the tree is no longer fit for classification as a Scheduled Tree, and has been recommended for removal from the 2GP Schedule, the residual positive effects that the tree may be having on the amenity of the wider area (outside the site) must be outweighed by the owners needs to fully utilise and best manage their property.
- [57] Overall, I consider the proposal is consistent with those matters outlined in Part 2 of the Act.

Section 104

- [58] Section 104(1)(a) states that the Council shall 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 minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [59] 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 with the key objectives and policies relating to the Residential Zones and Trees Sections of the Dunedin City District Plan and contrary to the provisions of the Proposed 2GP.
- [60] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago.
- [61] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.

CONCLUSION

- [62] While the contribution the tree makes to this section of the Mornington Road streetscape amenity is high, the tree no longer passes the STEM assessment necessary for a tree to be protected. Given it is unlikely to improve in STEM assessment into the future, consideration for the impact of its removal has been made. I have concluded from the Arborist and Landscape reports that the tree is not a magnificent specimen, and its removal is mitigated by the existing vegetation and trees also located along this frontage, providing balance and softening any negative effect following its removal. The tree has become too big for its setting and its size is possible that the tree may be giving rise to some of the problems being experienced in the immediate foreground and background of the tree. There are some positive impacts in the immediate vicinity of the tree for the owners and some residual positive impacts on the neighbours on the opposite side of the road relating to increased sunlight.
- [63] Having regard to the above assessment of effects, and accepting that the STEM reassessment completed by the Council's landscape architect and consultant Arborist fails to meet the criteria necessary to warrant its continued inclusion in Schedule 25.3, I consider that the likely adverse effects of the proposed activity will be minor. I recommend that the application be granted subject to appropriate conditions surrounding the removal of the tree.
- [64] The proposal is considered to be inconsistent with the key relevant objectives and policies of the Dunedin City District Plan and contrary to the key relevant objectives and policies in the Proposed 2GP.
- [65] The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago.
- [66] The proposal is considered to be consistent with the Part 2 matters of the Resource Management Act 1991.

DECISION

*That, pursuant to sections 34A and 104C and after having regard to Part 2 matters and section 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a discretionary (unrestricted) activity for the removal of a Scheduled New Zealand Beech Tree (T808) on the site at 116 Mornington Road, Dunedin, being that land legally described as Lot 2 Deposited Plan 365150 and held in Computer Freehold Register 264323, subject to the conditions imposed under section 108 of the Act as shown on the attached certificate.*

COMMENCEMENT OF CONSENT

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

RIGHT OF APPEAL

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

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

- [69] Any appeal must be served on the following persons and organisations:

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

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

- [71] Please direct any enquiries you may have regarding this decision to Melissa Shipman whose address for service is City Planning, Dunedin City Council, P O Box 5045, Dunedin 9058.

Prepared by:

Approved by:


Melissa Shipman
Planner


Alan Worthington
Resource Consents Manager

1 June 2016

1 June 2016

Consent Type: Land Use Consent

Consent Number: LUC-2008-498

*That, pursuant to sections 34A and 104C and after having regard to Part 2 matters and section 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a discretionary (unrestricted) activity for the removal of a Scheduled New Zealand Beech Tree (T808) on the site at 116 Mornington Road, Dunedin, being that land legally described as Lot 2 Deposited Plan 365150 and held in Computer Freehold Register 264323, subject to the conditions imposed under section 108 of the Act as shown below:*

Location of Activity: 116 Mornington Road, Dunedin

Legal Description: Lot 2 Deposited Plan 365150 (CFR 264323)

Lapse Date: 1 June 2021

Conditions:

- 1 *The activity shall be carried out generally in accordance with the information in the application dated 4 March 2016, except where modified by the following conditions of consent.*
- 2 *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		Saturdays	
	(dBA)		(dBA)	
	Leq	L _{max}	Leq	L _{max}
0730-1800	75	90	75	90
1800-2000	70	85	45	75

- 3 *Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise. No work is undertaken on Sundays or Public Holidays nor between 8.00pm to 7.30am Weekdays or Saturdays.*
- 4 *The removal of Scheduled Tree T808 shall be in accordance with arboricultural best practice and undertaken by a suitably qualified person.*
- 5 *The consent holder shall advise the Council in writing of the date that T808 is to be removed. The written advice shall be provided to the Council at least five (5) working days prior to the removal of the tree.*
- 6 *All waste generated by the removal works shall not cause a nuisance and shall be suitably disposed of within 7 days of the completion of the works.*
- 7 *A suitable temporary barrier such as a temporary fence, barrier mesh, or 'danger tape' shall be erected on the site and/or on the pedestrian walkway outside the*

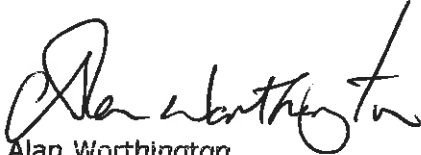
site while work is taking place to keep people and property safe from falling limbs and debris.

- 8 *The consent holder shall reinstate and make good any damage caused to the Council kerbing and pavement that has been or will be disturbed by the tree during its removal.*

Advice Notes:

- 1 In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
- 4 This consent shall lapse after a period of five years from the date of granting of this consent. This period may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

Issued at Dunedin this 1st day of June 2016



Alan Worthington

Resource Consent Manager