



**SECOND
GENERATION
DISTRICT PLAN**

**Scheduled Trees
Decision of the Hearings Panel**

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

7 November 2018



User guide to the decision reports and the marked-up decisions version of the 2GP

The decisions of the 2GP Hearings Panel are presented in 29 decision reports (one report per hearing topic).

The reports include the Panel's decisions and reasons and incorporate the requirements under s32AA.

At the end of each report a table has been included summarising all the decisions on provisions (Plan text) in that decision report.

Marked-up version of the Notified 2GP (2015)

The decisions include a marked-up version of the notified 2GP, which shows the amendments made to the notified plan in ~~strike-through~~ and underline. Each amendment has a submission point reference(s) or a reference to 'cl.16' if the amendment has been made in accordance with Schedule 1, clause 16(2) of the Resource Management Act. Schedule 1, clause 16(2), allows minor and inconsequential amendments to be made to the Plan.

Amendments to the Schedules below are not marked up as in other sections of the plan as they are drawn from a different source. Any changes to Schedules are detailed in the decision report for the relevant section.

Some very minor clause 16 changes such as typographical errors or missing punctuation have not been marked up with underline or strikethrough. More significant cl. 16 changes (such as where provisions have been moved) are explained using footnotes, and in some cases are also discussed in the decision.

Hearing codes and submission point references

As part of the requirement of the DCC to summarise all original submissions, all submission points were given a submission point reference, these references started with 'OS'. Further submissions were also summarised and given a submission point that started with 'FS'.

The submission points are made up of two numbers the first is the submitter number, which is followed by a full stop, the second part is the submission point number for that submitter.

For example, OS360.01 is submitter 360 and their first submission point.

The 2GP Hearings Panel has used these same submission point references to show which submission points different amendments were attributed to. However, to enable these changes to be linked to different decision reports, the reference code was changed to start with a decision report code, e.g. Her 308.244.

A list of hearing codes can be found on the following page.

It should be noted that in some cases where several submitters sought a similar change, the submission point reference may not include all of these submission points but rather include only one or say, for instance, "PO 908.3 and others".

Master summary table of all decisions

In addition to the summary table at the end of each decision report there is a master summary table that lists all decisions on provisions (Plan text), across all hearing topics, including details of the section(s) of the decision report in which that decision is discussed, and the relevant section(s) of the s42A reports. The s42A report sections will be helpful for appellants needing to identify which other parties have submitted on that provision, as notices of the appeal must be served on every person who made a submission on the provision or matter to which the appeal relates. The master summary table of decisions can be found on the decisions webpage of the 2GP website (2gp.dunedin.govt.nz).

List of hearing codes

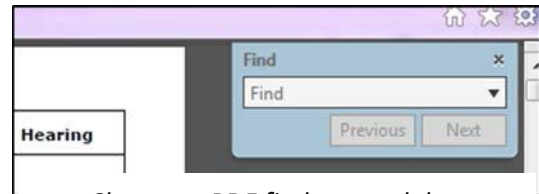
Hearing topic	Code
Commercial Advertising (cross plan hearing topic)	CP
Commercial and Mixed Use Zones	CMU
Community Correction Facilities (cross plan hearing topic)	CP
Defence Facilities and Emergency Services (cross plan hearing topic)	CP
Designations	Des
Earthworks	EW
Heritage	Her
Industrial Zones	Ind
Major Facilities (without Port and Mercy Hospital)	MF
Manawhenua	MW
Mercy Hospital	Mer
Natural Environment	NatEnv
Natural Hazards	NatHaz
Natural Hazard Mitigation	HazMit
Network Utilities	NU
Plan Overview and Structure	PO
Port Zone	Port
Public Amenities	PA
Public Health and Safety (PHS)	PHS
Quarries and Mining Activities (cross plan hearing topic)	CP
Recreation Zone	Rec
Residential Zones	Res
Rural Zones	RU
Rural Residential Zones	RR
Scheduled Trees	ST
Service Stations (cross plan hearing topic)	CP
Temporary Activities	TA
Transportation	Trans
Urban Land Supply	ULS

How to search the document for a submitter number or name

1. If you want to search for particular submitter name, submission point or Plan provision in any of the reports (decision report, marked-up version of the Plan, or s42A report) the easiest way to do this is to use the 'Find' function.
2. When you have the document open, press the keys CTRL and F (Windows) or CMND and F (Mac) to bring up the 'PDF Finder'.



Chrome – PDF finder search box



Chrome – PDF finder search box

3. Once the PDF search box appears (in the top left or right corner of your browser) type in the submission number or submitter name and press enter on your keyboard.
4. The PDF finder will search for all instances of this term. Depending on the size of the document and your internet connection it may take a minute or so.
5. Press on the up or down arrows (Chrome) or 'next' (Internet Explorer) in the search box to view the different instances of the term until you find the one you are looking for.
6. An 'advanced search' function is available under the Edit tab in some PDF viewers, this allows you to search 'whole words' only to look for exact strings of letters or numbers

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1.0 Introduction

1. This document details the decision of the proposed Dunedin City District Plan Hearings Panel/Te Paepae Kaiwawao Motuhake O Te 2GP, based on the submissions and evidence considered at the Scheduled Trees Hearing. The hearing was held on 26 and 27 May 2016, at the 2GP Hearings Centre.

1.1 Scope of decision

2. This Decision Report addresses submissions on Schedule A1.3 and on provisions that relate to removal or modification of scheduled trees. Eighty five submissions and five further submissions were received on the Scheduled Trees section and/or appearance on the 2GP maps and related provisions.

1.1.1 Section 42A Report

3. The Scheduled Trees topic s42A Report deals primarily with plan provisions included in the Scheduled Trees section of the 2GP. The Scheduled Trees section of the 2GP contains provisions which link to management and major facilities zones. It covers matters related to the management of scheduled trees.

1.1.2 Structure of Report

4. The decision report is structured by topic. The report does not necessarily discuss every individual submitter or submission points; instead it discusses the matters raised in submissions and records our decisions and reasons on the provisions relevant to each topic¹. Appendix 2 at the end of the report summarises our decision on each provision where there was a request for an amendment. The table in Appendix 2 includes provisions changed as a consequence of other decisions.
5. Schedule 1 of the Resource Management Act, 1991 (RMA) outlines key aspects of the process that must be used to prepare and make decisions on a plan change (including the submission and hearing process).
6. Clause 16(2) of that schedule allows a local authority to make an amendment where the alteration "is of minor effect", and to correct any minor errors, without needing to go through the submission and hearing process.
7. This decision includes some minor amendments and corrections that were identified by the DCC Reporting Officers and/or by us through the deliberations process. These amendments are referenced in this report as being attributed to "cl.16". These amendments are summarised in Section 5.0.

1.2 Section 32AA evaluation

8. Section 32 of the Resource Management Act 1991 (RMA) establishes the framework for assessing proposed objectives, policies and rules. Section 32AA of the RMA requires a further evaluation to be released with decisions, outlining the costs and benefits of any amendments made after the proposed Plan was notified.
9. The evaluation must examine the extent to which each objective is the most appropriate way to achieve the purpose of the RMA and whether, having had regard to their efficiency and effectiveness, the policies and rules proposed are the most appropriate

¹ In accordance with Schedule 1, section 10 of the RMA

for achieving the objectives. The benefits and costs of the policies and rules, and the risk of acting or not acting must also be considered.

10. A section 32AA evaluation has been undertaken for all amendments to the notified Plan. The evaluation is included within the decision reasons in sections 3.0 and 4.0 of this decision.

1.3 Statutory considerations

11. The matters that must be considered when deciding on submissions on a district plan review are set out in Part 2 (section 5-8, purpose and principles) and sections 31, 32 and 72-75 of the RMA. District plans must achieve the purpose of the RMA and must assist the council to carry out its functions under the RMA.
12. The s42A Report provided a broad overview of the statutory considerations relevant to this topic. These include:
 - Section 6 of the RMA, which requires us to recognise and provide for matters of national importance. Trees can be important due to heritage or cultural values (Section 6(e) and 6(f)).
 - Section 7 (c) of the RMA, which requires us to have particular regard to the maintenance and enhancement of amenity values. Trees, particularly in urban environments can be an important aspect of establishing and maintaining amenity values.
 - Section 75(3) of the RMA, which requires us to ensure the 2GP gives effect to any National Policy Statement (NPS) or National Environmental Standard (NES) that affects a natural or physical resource that the Plan manages. We note that no NPS or NES directly relevant to this particular topic.
 - Section 74(2)(a) of the RMA, which requires us to have regard to the proposed Otago Regional Policy Statement (pRPS) and section 75(3)(c) of the RMA, which requires us to ensure the 2GP gives effect to the operative Otago Regional Policy Statement (oRPS). We note that the proposed RPS was notified on 23 May 2015, and decisions released on 1 October 2016. At the time of making these decisions on 2GP submissions some of the proposed RPS decisions are still subject to appeal, and therefore it is not operative.
 - Section 74(2)(b)(i), which requires us to have specific regard to any other key strategies prepared under the Local Government Act. The s42A Report highlighted the Dunedin Spatial Plan 2012 as needing to be considered as this DCC strategic document sets the strategic directions for Dunedin's growth and development for the next 30 plus years.
 - Sections 76(4A) and 76(4B) of the RMA were inserted by the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (RMAA09). The provisions require us to specifically identify certain trees for protection in a plan, either individually or as part of a definable group.
13. These statutory requirements have provided the foundation for our consideration of submissions. We note:
 - where submissions have been received seeking an amendment of a provision and that provision has not been amended, we accept the advice in the original s42A Report that the provision as notified complies with the relevant statutory considerations.

- where a submitter has sought an amendment in order to better meet the statutory considerations, we have discussed and responded to these concerns in the decision reasons.
- in some cases, while not specifically raised, we have made amendments to the Plan as the evidence indicated this would more appropriately achieve these statutory considerations, in these cases we have explained this in our decision reasons.
- where we have amended the Plan in response to submissions and no parties have raised concerns about the provisions in terms of any statutory considerations, and we have not discussed statutory considerations in our decision, this should be understood to mean that the amendment does not materially affect the Plan's achievement of these statutory considerations.

2.0 Hearing appearances and evidence presented

14. Table 1 lists the 14 submitters (or their representatives) who attended the hearing and/or provided evidence for consideration. The table includes the topics they addressed. All evidence can be found on the 2GP Hearing Schedule webpage under the relevant Hearing Topic <https://2gp.dunedin.govt.nz/2gp/hearings-schedule/index.html>

Table 1: Hearing appearances, evidence presented and key points raised

Submitter, (Submitter Number)	Represented by	Expert evidence, submissions or evidence tabled at the hearing	Topics under which evidence is discussed
<i>Colin Weatherall</i> (OS194)	Colin Weatherall	Appeared at hearing	<ul style="list-style-type: none"> • Policy 2.4.1.2 Criteria for Identifying Significant Trees and managing removal or modification (sub-section 3.3.1)
<i>Knox and Salmond Colleges Board</i> (OS182)	Graham Redding (representative)	Appeared at hearing	<ul style="list-style-type: none"> • Policy 7.2.1.2 Avoidance of Scheduled Tree Removal (sub-section 3.3.2) • Request to change activity status from non-complying to discretionary (sub-section 3.4.1) • Setback from Scheduled Tree (sub-section 3.5.1)
<i>University of Otago</i> (OS308)	Murray Brass (representative)	Written statement and appeared at hearing	<ul style="list-style-type: none"> • Policy 2.4.1.2 Criteria for Identifying Significant Trees and managing removal or modification (sub-section 3.3.1) • Policy 7.2.1.2 Avoidance of Scheduled Tree Removal (sub-section 3.3.2) • Request to change activity status from non-complying to discretionary (sub-section 3.4.1) • Rule 7.4.1 Notification of certain Scheduled Tree work (sub-section 3.4.2) • Performance standards for work on or near a scheduled tree (sub-section 3.5)

<i>Chorus (OS925), Spark New Zealand Trading Limited (OS923) and Vodafone NZ Limited (OS576)</i>	-	Evidence pre-circulated on 18 May 2016, did not appear at the hearing	<ul style="list-style-type: none"> Performance standards for work on or near a scheduled tree (sub-section 3.5)
<i>Craig Horne Surveyors Ltd (OS704)</i>	Craig Horne (representative)	Appeared at hearing	<ul style="list-style-type: none"> Request to remove the 'half the height' requirement, and exempt structures and alterations that would not affect scheduled trees (sub-section 3.5.1.4)
<i>Morclarke Developments (2009) Ltd (OS46)</i>	Andrew Robinson (representative)	Appeared at hearing	Appendix A1.3 Schedule of trees, and mapping of scheduled trees: <ul style="list-style-type: none"> 4 Montecillo Lane / 80 Eglinton Road (G037 and T406) and 2 Montecillo Lane (T402) (sub-section 3.6.8)
<i>Michael Brough (OS363)</i>	Craig Horne (representative)	Appeared at hearing	Appendix A1.3 Schedule of trees, and mapping of scheduled trees: <ul style="list-style-type: none"> 113 Gladstone Road Mosgiel (T040) (sub-section 3.6.5)
<i>Robert Hugh Tongue (OS452)</i>	Robert Hugh Tongue	Appeared at hearing	Appendix A1.3 Schedule of trees, and mapping of scheduled trees: <ul style="list-style-type: none"> 556 Highgate (T610) (sub-section 3.6.9)
<i>CC Otago Ltd (OS276)</i>	Craig Horne (representative)	Appeared at hearing, expert evidence	Appendix A1.3 Schedule of trees, and mapping of scheduled trees: <ul style="list-style-type: none"> 27 King Street Mosgiel (T666) (sub-section 3.6.3) 32 Gordon Road Mosgiel (T071) (sub-section 3.6.4)
<i>NZ Transport Agency (OS881)</i>	N.A	Written Statement received before the hearing. Did not appear	Appendix A1.3 Schedule of trees, and mapping of scheduled trees: <ul style="list-style-type: none"> Cardiff Street road reserve, Middelmarsh (T1064) and 1531 Dunedin-Waitati Road (T1163) (sub-section 3.6.11)

<i>Miller Family Trust</i> (OS421)	Brian Miller (representative)	Appeared at hearing, written statement	Appendix A1.3 Schedule of trees, and mapping of scheduled trees: <ul style="list-style-type: none"> 77 Riccarton Road West Mosgiel (T1250 and T1251) (sub-section 3.6.2)
<i>Douglas Hall</i> (OS1068, FS2474)	Douglas Hall	Appeared at hearing, supplied three sets of photos	Appendix A1.3 Schedule of trees, and mapping of scheduled trees: <ul style="list-style-type: none"> 552 North Road (T865), (sub-section 3.6.6) and 649 North Road (T868) (sub-section 3.6.7)
<i>Power Net</i> (FS2264)	-	Pre-circulated evidence, did not appear at hearing	<ul style="list-style-type: none"> Policy 7.2.1.2 Avoidance of Scheduled Tree Removal (sub-section 3.3.2)
<i>Veronica Dalloway</i> (OS676)	-	Expert evidence received before hearing. Did not appear at hearing	Appendix A1.3 Schedule of trees, and mapping of scheduled trees: <ul style="list-style-type: none"> 21 Constitution Street (T351) (sub-section 3.6.10)

15. Appearances for the Dunedin City Council were:

Ann Rodgers, Reporting Officer

Evidence provided by Ms Rodgers included:

- s42A report
- opening statement (verbal)
- revised recommendations (verbal and tabled)

Barry Knox, Senior Landscape Architect

Evidence provided by Mr Knox included:

- statement of evidence
- policy appendices
- STEM Method Appendix
- standard tree evaluations (presented jointly with Mr Battrick)

Aidan Battrick, Parks Officer – Trees

Evidence provided by Mr Battrick included:

- statement of evidence
- standard tree evaluations (presented jointly with Mr Knox).

16. Planning assistance to the hearing was provided by DCC Senior Planner, Mr Paul Freeland.

3.0 Key topics discussed at the hearing or covered in the tabled evidence

3.1 Overview

17. Trees are an important natural resource that contribute positively to the amenity and landscape values of an environment. They are also important in terms of their cultural, historical, and botanical values. Together, these values influence the quality of the environment, making trees particularly important to the community. Some trees have a greater impact on amenity and quality of the environment than others and require protection.
18. Trees that make a significant contribution towards the maintenance and enhancement of amenity and the quality of the environment and have been offered up previously are identified in Schedule A1.3 of the 2GP. The provisions of the 2GP recognise and provide for the retention of trees with the focus being on the protection of the trees from inappropriate removal or trimming, while acknowledging that there might be circumstances when substantial pruning or removal are unavoidable due to poor health or damage or because tree growth causes potential risk with nearby development.
19. Trees listed in Schedule A1.3 have been surveyed by the DCC Parks Officer – Trees, and the DCC Landscape Architect, using the Standard Tree Evaluation Method (STEM). The STEM assessment is a tool used by over thirty local authorities in New Zealand and provides a consistent approach to the assessment of trees.
20. Each tree is evaluated against a number of criteria relating to the condition of the tree (i.e. its health), its amenity characteristics and any notable features attached to it (including stature, historic or scientific value). The method assesses positive and negative aspects of a tree prior to its consideration for inclusion in the Schedule. Trees are allocated points according to the value they possess and included in the Schedule if they pass a STEM benchmark score of 145 and the owners agree at the time of first inclusion.
21. Trees subject to submissions seeking their removal from the Schedule, or their addition to the Schedule, were re-assessed by the Reporting Officer following receipt of submissions, using the STEM. The result of this re-assessment is that some trees were recommended for removal from the Schedule as notified.
22. The Scheduled Trees section in the 2GP has a policy framework supported by provisions relating to the removal or modification of trees listed in Schedule A1.3. The key objective for scheduled trees is Objective 7.2.1, which states "The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained".
23. Applications for removal of a scheduled tree that is dead or in decline, or modification of a scheduled tree using best arboricultural practices, are considered as discretionary restricted activities. The removal of, or any other work on, a scheduled tree that will lead to the death or terminal decline of a scheduled tree is a non-complying activity.
24. There are two performance standards in Section 7, "Best Arboricultural Practice" and "Setback from Scheduled Tree". Applications for modification or removal of a scheduled tree are assessed through this section. Reference to the "Setback from Scheduled Tree" performance standard is included in all management zones, in relation to development activities. Compliance with rules in Section 7 is also required in relation to activities in major facilities zones.

25. In addition to the rules outlined in Section 7, other methods used by the DCC to promote Objective 7.2.1 and reduce costs include the waiving of resource consent fees for applications to remove or modify scheduled trees, and providing a *Fund for Maintaining Significant Trees* (a financial incentive to assist owners with the maintenance of Significant Trees listed in the Schedule). These measures acknowledge the contribution scheduled trees make to the wider community.
26. The list is not an exhaustive list of trees that contribute to the amenity but is a result of a voluntary process. Once a tree is listed however, the landowner cannot withdraw their support and then have the tree delisted.

3.2 Context

27. Submissions considered at the Scheduled Trees Hearing can be grouped in relation to the following main topics:
- Criteria for modification or removal of a scheduled tree
 - Activity status for modification or removal
 - Performance standards
 - Appendix A1.3, Schedule and Mapping of Scheduled Trees.

3.3 Criteria for modification or removal of a scheduled tree

3.3.1 Policy 2.4.1.2 Criteria for identifying significant trees and for managing removal or modification

28. Policy 2.4.1.2, in the Strategic Directions section of the 2GP, sets up the methods used in the Plan with respect to significant trees. These include the identification of significant trees in a schedule (Schedule A1.3) based on listed criteria, and the use of rules to restrict removal or modification of these trees.
29. The policy states:

Policy 2.4.1.2

Identify in a schedule (see Appendix A1.3) trees that make a significant contribution to the visual and historical landscape and amenity of neighbourhoods and other places, and use rules to restrict removal or modification of these trees. Identify significant trees based on the following criteria:

- a. *health and condition of the tree, including:*
 - i *vigour and vitality, and*
 - ii *age; and*
- b. *contribution to the amenity of an area, including:*
 - i *occurrence of the species and historic and scientific values,*
 - ii *function (usefulness), for example biodiversity supporting or fruit bearing,*
 - iii *stature,*
 - iv *visibility,*
 - v *proximity of other trees,*
 - vi *role in the setting, and*
 - vii *climatic influence; and*
- c. *any potential adverse effects, including:*
 - i. *risk to safety, and*
 - ii. *risk of potential damage to existing infrastructure, buildings or structures.*

30. The criteria in Policy 2.4.1.2 for the identification of significant trees reflect the STEM assessment system and the broader criteria that were considered in the assessment of trees for inclusion in the schedule. The criteria consider three main factors, i.e. the health and condition of the tree; contribution to the amenity of an area; and some potential adverse effects.

3.3.1.1 Submissions and Reporting Officer's s42A responses

31. The submissions of both *Colin Weatherall* (OS194.2) and the *University of Otago* (OS308.62) were that the assessment criteria ought to include provision for a more open assessment of both the positive and negative impacts of trees.
32. In her s42A Report, Ms Rodgers considered that the proposed policy framework and the references to potential adverse effects does adequately address the outcome the submitters were seeking, and that no amendment was required.
33. Mr Murray Brass, in his written statement on behalf of the *University of Otago* (OS308.62) expanded on his concern and said that the list of adverse effects is quite constrained. He suggested that the wording of the policy be modified to reflect that the list of adverse effects is not exhaustive, and the policy should include provision for the consideration of adverse effects on the reasonable use of the land.

3.3.1.2 Decision and reasons

34. Our decision is to reject the submission points from *Colin Weatherall* (OS194.2) and the *University of Otago* (OS308.62), and retain the policy without amendment. We agree with the Reporting Officer that the policy does, at least in part, cover the matters raised by the submitters with respect to consideration of potential adverse effects (2.4.1.2.c). We do, however, have sympathy for the points made about the effects a scheduled tree may (in time) have on the reasonable use of land and have added this factor to the policy for assessing applications for removal (see below).

3.3.2 Policy 7.2.1.2 Avoidance of scheduled tree removal

35. Policy 7.2.1.2 sets up the non-complying activity status for the activity "Removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree" and clear tests for when it might be appropriate to grant consent for this activity. These tests include when there are adverse effects in terms of risk to public health and safety, the tree significantly compromises access to sunlight in relation to residential buildings, and/or there are significant adverse effects on public infrastructure.

3.3.2.1 Submissions and Reporting Officer's 42A responses

36. In their original submission *Knox and Salmond Colleges Board* (OS182.1) and the *University of Otago* (OS308.156) requested that the policy be amended to provide a wider scope for the removal of trees where there are health and safety considerations. The *University of Otago* (OS308.156) also requested that the word 'significant' be removed from Policy 7.2.1.2 when considering safety risks, and also sought amendments to the policy to allow for the removal of trees to provide for reasonable development of a site; and to amend the reference 'public infrastructure' to 'infrastructure'. *Aurora Energy Limited* (OS457.52), supported by *Powernet Limited* (FS2264.21), sought allowance for the removal of trees for network utility activities.
37. In response to these submissions, in her s42A Report, Ms Rodgers recommended that the word "significant" be removed from clause (a), and that the words "public infrastructure" in clause (c) be replaced with "existing infrastructure". She noted that

these amendments would generate the need for consequential amendments to Rule 7.8.2 (Assessment of non-complying activities).

3.3.2.2 Hearing evidence and Reporting Officer's revised recommendations

38. Graham Redding on behalf of *Knox and Salmond Colleges Board* (OS182.1) discussed their submission at the hearing, elaborating on their request for changes to this policy to allow a wider range of potential reasons for removing a scheduled tree. These included circumstances where a tree might affect a heritage building, noting that under the notified policy wording this would not be grounds for the removal of a scheduled tree.
39. In his written statement, Mr Murray Brass, on behalf of the *University of Otago* (OS308.156), argued that Policy 7.2.1.2, in combination with the non-complying activity status of scheduled tree removal, would mean that the second limb of the s104D gateway test could in practice never be met for reasons other than for safety risk, shading, or effects on infrastructure.
40. Mr Brass supported the Reporting Officer's s42A Report recommendation in respect of the replacement of "public infrastructure" with "existing infrastructure".
41. In the pre-circulated evidence supplied by Ms Megan Justice on behalf of *Powernet Limited* (FS2264.21), Ms Justice gave her opinion that it would be appropriate to enable the removal of a scheduled tree where that tree would cause significant adverse effects on a network utility activity. She suggested inclusion of the words "network utility activities" in the policy.
42. During the hearing, the Panel questioned the Reporting Officer about her recommendation to remove the word "significant", and whether this could be too enabling. Ms Rodgers advised that she agreed that removal of the word "significant" from the policy could lead to a lack of clarity around what level of risk is enough to justify the granting of consent for the removal of a tree, and said on reflection she no longer recommended that the word be removed.
43. In response to the evidence presented and questions asked by the Panel, Ms Rodgers also recommended:
 - that new clauses be added to the policy to address risks to scheduled heritage buildings or effects on the use of a scheduled heritage building or structure
 - amendment of the policy to include reference to health and safety legislation, and, as a consequence, for the risk to property to be split out from this clause to a separate clause
 - the addition of a new clause "the tree has significant adverse effects on the reasonable use of land", in response to the evidence presented by Mr Brass
 - provision for existing network utilities in the policy, in response to the evidence of Ms Justice.
44. In response to a question from the Panel, Ms Rodgers advised that biodiversity is not explicitly provided for in the Scheduled Tree section of the 2GP, nor Policy 7.2.1.2. She suggested that it would be in keeping with Strategic Direction Policy 2.4.12 to include reference to biodiversity within Policy 7.2.1.2.

3.3.2.3 Decision and reasons

45. Our decision is to:

- accept the submissions of *Knox and Salmond Colleges Board* (OS182.1), the *University of Otago* (OS308.156) and *Powernet Limited* (FS2264.21) insofar as they relate to amending Policy 7.2.1.2 to allow for the removal of trees to provide for reasonable development of a site, amending the reference to “public infrastructure” to “existing infrastructure”; and to provide for the removal of trees for (existing) network utility activities (see Appendix 1, submitter references ST 182.1, ST 308.156 and ST 457.52), and
 - make consequential amendments to Rule 7.8.2 Assessment of non-complying activities, to reflect the changes made to Policy 7.2.1.2 (see Appendix 1, submitter references ST 182.1, ST 308.156 and ST 457.52).
46. Our reasons are that we consider the amendments to the policy recommended by the Reporting Officer are an appropriate response to the matters raised by submitters, in respect of including reference to health and safety legislation, addressing risks to buildings (including heritage buildings), managing effects on existing network utilities, and providing for the reasonable development of a site.
47. We do, however, wish to express our concerns that Policy 7.2.1.2 does not include any reference to biodiversity and habitat value as a specific criterion. However, we note that no submission to that effect had been received in relation to either the Scheduled Trees or Natural Environment sections, and so there is no scope for this amendment. We do record our recommendation that this issue should be considered by the DCC through a future Plan change. A future Plan change could also include a review of the STEM assessments which we consider could be broadened to include biodiversity measures.

3.4 Activity status for removal or modification of a scheduled tree

3.4.1 Request to change activity status from non-complying to discretionary

48. Rule 7.3.2.3 sets out the non-complying activity status of the removal of a scheduled tree or any other work that will lead to the death or terminal decline of a scheduled tree.
49. *Knox and Salmond Colleges Board* (OS182.3) and the *University of Otago* (OS308.158) both submitted that the activity status of an application to remove a scheduled tree be changed from non-complying to discretionary.
50. In her s42A Report, Ms Rodgers did not support these submissions, and considered it appropriate that any work on a scheduled tree that results in its terminal decline or death be assessed through a robust process, which the non-complying activity status would require.
51. Mr Murray Brass, in his written statement on behalf of the *University of Otago* (OS308.158), expressed concern that the non-complying activity status would in practice mean an application to remove a tree for any reason other than those specific reasons outlined in Policy 7.2.1.2 (e.g. to enable reasonable development of a site) could not meet the S104D gateway test, and therefore would not be granted.
52. In her right of reply, Ms Rodgers advised that she did not wish to amend her recommendation. She stated that the non-complying activity status had been intentionally imposed to indicate that removal of scheduled trees that are in good health is not something anticipated by the Plan, and is something that should only be granted under special circumstances.

3.4.1.1 Decision and reasons

53. We reject the submissions of *Knox and Salmond Colleges Board* (OS182.3) and the *University of Otago* (OS308.158), which sought to amend the activity status of an application to remove a scheduled tree from non-complying to discretionary, and retain Rule 7.3.2.3 without amendment.
54. We accept the evidence of the Reporting Officer that non-complying activity status is appropriate for the removal of a scheduled tree. The assessment of a tree that is listed on the schedule acknowledges its significance, and the higher threshold test for its removal or for work that results in its decline is appropriate. We note that Policy 7.2.1.2 sets out clear tests for instances where the proposed removal of a tree might pass the section 104D threshold tests (for a non complying activity) and be granted consent. The Panel also notes that Rule 7.3.2.1 allows for the removal of a tree that is dead or dying is a restricted discretionary activity. Overall, we feel this an appropriate balance.

3.4.2 Rule 7.4.1 Notification of certain scheduled tree work

55. Rule 7.4.1 requires the notification of any application for resource consent for the removal of a scheduled tree or any other work that will lead to the death or terminal decline of a scheduled tree, except where a tree is dead or in terminal decline as documented by a suitably qualified arborist.
56. The *University of Otago* (OS308.159) sought to remove this rule.
57. In her s42A Report, Ms Rodgers recommended the submission be rejected, noting that the rule reflects the probable outcome of an assessment under sections 95A-G of the RMA, and provides transparency for applicants regarding the processing of such consents.
58. Mr Brass, in his written evidence on behalf of the *University of Otago* (OS308.159), observed that based on the University's experience, requiring public notification for all applications to remove a scheduled tree was likely to have perverse outcomes, such as the situation where a tree had been incorrectly scheduled.

3.4.2.1 Decision and reasons

59. Our decision is to reject the submission of the *University of Otago* (OS308.159), which sought to remove Rule 7.4.1
60. We agree with the assessment in the s42A Report that the rule appropriately reflects the non-complying activity status of scheduled tree removal, and notification is the probable outcome of an assessment under sections 95A-G of the RMA. This also provides transparency for applicants regarding the processing of such consents.
61. In response to Mr Brass's concerns, we note that where a tree has been incorrectly scheduled it should be possible for the DCC to address this by way of a minor Plan change to correct the schedule, or by processing of a resource consent application with the consent fees waived as discussed earlier in this decision report.

3.5 Performance standards for work on or near a scheduled tree

3.5.1 Setback from a scheduled tree

62. Policy 7.2.1.4 sets up Rule 7.5.2 Setback from scheduled tree, and states:

"Require earthworks, network utilities activities, new roads and additions and alterations to roads, buildings, structures, and site development that involves the laying of an impermeable surface, to be set back from a scheduled tree an adequate distance to avoid:

- a. damage to the scheduled tree; and*
- b. potential future adverse effects caused by the tree on amenity values, structural integrity of buildings or infrastructure, or safety that may lead to future demand to remove the tree."*

63. Rule 7.5.2 provides for a minimum set back from Scheduled Trees for:

- new buildings and structures, or additions or alterations
- public amenities
- earthworks
- new roads or additions or alteration to roads
- Network Utilities activities; and
- Site Development activities that involve the installation of impermeable surfacing.

64. The performance standard requires that these activities not take place within the dripline of a scheduled tree or within a distance from the trunk equivalent to half the height of the tree, whichever is the greater.

3.5.1.1 Submissions and s42A Report and recommendations

65. *Aurora Energy Limited* (OS457.27) sought to exclude the operation, repair, upgrading and maintenance of existing network utilities from compliance with the setback rule. Similarly, *Vodafone NZ Ltd* (OS576.30, OS576.32), *Spark New Zealand Trading Limited* (OS923.30, OS923.32) and *Chorus New Zealand Limited* (OS925.30, OS925.32) submitted to exempt network utilities where they are installed at least 800mm below ground level, using trenchless methods. These submissions requested changes to both Policy 7.2.1.4 and Rule 7.5.2 to achieve this.

66. The Reporting Officer considered that Policy 7.2.1.4 is appropriate as every effort should be made to avoid any disturbance of the root system of a scheduled tree and if work within the dripline of a scheduled tree is required a resource consent process is appropriate, therefore she did not recommend any amendments to Policy 7.2.1.4 (s.42A Report, Section 3.3.6, pp.18-19).

67. The Reporting Officer also considered that trenchless methods are preferable to trenching, but noted it is difficult to determine what might be an appropriate depth as this would vary depending on the type, age and size of a tree. She said that damage to the root system is the main cause of death or decline in a tree, and therefore it is appropriate that any activity to be undertaken within the dripline of a scheduled tree is first assessed by a suitably qualified arborist. In her view, the resource consent process will allow assessment on a case by case basis, and provide the opportunity for appropriate conditions to be imposed. Therefore, the Reporting Officer recommended Rule 7.5.2 be retained without amendment. (s.42A Report, Section 3.3.11, pp.27-28).

68. In their combined written statement *Vodafone NZ Ltd* (OS576.30, OS576.32), *Spark New Zealand Trading Limited* (OS923.30, OS923.32) and *Chorus New Zealand Limited* (OS925.30, OS925.32) referred to evidence from Mr Karl Burgisser of Arborlab

Consultancy Services Limited, and Mr Donaldson (arborist for Auckland City Council). That evidence was that methods of trenchless installation of utilities, when horizontal drilling is at one metre below ground level or deeper, have no perceivable adverse effects on the relevant trees. The submitters stated that they would accept one metre depth as an alternative to the 800mm depth relief sought in the original submission.

69. The DCC Parks Officer - Trees, Mr Aidan Battrick, gave advice on the evidence presented by those submitters. He said he agreed that the Best Practice Guidelines by the New Zealand Arboricultural Association Incorporated provided the ability to allow particular work to happen under drip lines. However, Mr Battrick considered that such work should still require consultation and a consent process. In answer to questions, Mr Battrick said he had not reviewed the Australian Standards in depth and did not provide advice in relation to them.
70. In her closing address, Ms Rodgers said in consideration of the evidence presented by the submitters and the advice from Mr Battrick, she had amended her recommendation concerning Rule 7.5.2. She considered this should provide for network utility activities within a drip line using trenchless technology as a permitted activity, subject to a number of performance standards. Ms Rodgers also recommended the inclusion of a new definition for 'Trenchless Methods'.

3.5.1.2 Further information requested by the Panel

71. As a result of the expert evidence presented by *Vodafone*, *Chorus* and *Spark*, the Panel Chair wrote to the parties advising that the Panel's preliminary view was that provision should be made to allow for the trenchless installation of services in the vicinity of scheduled trees. The letter included draft amendments to Rule 7.5.2 and a proposed new definition for 'Trenchless Methods'.
72. Discussions were subsequently held between Mr Graeme McCarrison (Spark) on behalf of the three submitters and Ms Rodgers regarding the proposed amendments. Following this, Mr McCarrison advised he accepted the proposed provisions, but suggested the definition of 'Trenchless Methods' make specific reference to the repair of existing cables/network, pilot holes or similar methods.
73. Ms Rodgers considered the request and, following discussion with Mr Battrick, confirmed that the proposed change provided clarity and certainty, and was appropriate.

3.5.1.3 Decision and reasons

74. We accept the submissions of *Aurora Energy Limited* (OS457.27), *Vodafone NZ Ltd* (OS576.32), *Spark New Zealand Trading Limited* (OS923.32) and *Chorus New Zealand Limited* (OS925.32) insofar as they relate to exempting network utilities from the setback requirement where they are installed using trenchless means.
75. The decision includes the addition of a new definition in the 2GP for 'Trenchless Methods', amendment to Rule 7.5.2, and consequential amendments to Policy 7.2.1.4 and Rule 7.6.2.1 Assessment of performance standard contraventions - Setback from scheduled tree, as shown in Appendix 1 (ST 923.32 and others).
76. The reasons for our decision are that we accept the submitters' evidence that provision for trenchless installation of services in the vicinity of scheduled trees can be done without putting the health of the tree at risk, and will provide for efficient development of vital infrastructure.

77. We reject *Vodafone NZ Ltd* (OS576.30), *Spark New Zealand Trading Limited* (OS923.30) and *Chorus New Zealand Limited* (OS925.30) submission points related to amendment to Policy 9.2.1.4.

3.5.1.4 Request to remove the 'half the height' requirement, and exempt structures and alterations that would not affect scheduled trees

78. In their original submissions *Knox and Salmond Colleges Board* (OS182.18), the *University of Otago* (OS308.161), *Michael Brough* (OS363.2), *Craig Horne Surveyors Limited* (OS704.4), *Blueskin Projects Ltd* (OS739.4), *CTW Holdings Limited* (OS742.4) and *G and J Sommers Edgar* (OS889.22) sought the removal of the reference in Rule 7.5.2 to the setback being "half the height, whichever is the greater", in favour of referring only to the dripline of a scheduled tree.
79. In her s42A Report, Ms Rodgers considered that the setback from scheduled tree provisions reflect a precautionary approach but one that was a generally accepted arboricultural practice, and was therefore appropriate to retain. She considered that the provision encompasses a variety of tree types. That is, the reference to the dripline is appropriate for spreading canopy type trees, and the "half the height" requirement would provide for tall, narrow trees where the root system may not be adequately protected with a reference to the dripline alone.
80. Mr Brass, in his written evidence for the *University of Otago* (OS308.161), noted that as currently worded, the proposed setback requirement would capture a range of activities which would have no impact if placed within the dripline of a tall tree, such as rubbish bins, bicycle stands, internal building alterations, and external building alterations which do not increase the building's footprint. He considered that the provision was too stringent and should not be retained unless it was significantly amended to provide for the situations above to avoid unnecessary consents.
81. We note that the question of whether as written the setback performance standards are designed to, or will unintentionally, capture internal building alterations has been raised in other submissions at other hearings. We refer to our decision on this matter which is addressed in the Plan Overview Decision Report.

3.5.1.5 Decision and reasons

82. We reject the submissions of *Knox and Salmond Colleges Board* (OS182.18), the *University of Otago* (OS308.161), *Michael Brough* (OS363.2) *Craig Horne Surveyors Limited* (OS704.4), *Blueskin Projects Ltd* (OS739.4), *CTW Holdings Limited* (OS742.4) and *G and J Sommers Edgar* (OS889.22) insofar as they relate to the removal of the reference to the setback being "half the height, whichever is the greater", and referring only to the dripline of a scheduled tree.
83. Our reasons are we accept Ms Rodgers' opinion that the setback from scheduled tree provisions appropriately encompass a variety of tree types, whereby the reference to the dripline is appropriate for spreading canopy type trees, and the "half the height" requirement would provide for tall, narrow trees where the root system may not be adequately protected with a reference to the dripline alone.
84. We accept in part the submission from the *University of Otago* (OS308.161) in relation to the setback requirement as it relates to public amenities structures and building alterations that do not increase the building footprint. We have also amended the performance standard so that it applies only to activities that involve ground excavation or the installation of impermeable surfaces on the ground.

3.5.2 Best arboricultural practice

85. Rule 7.5.1 provides that the modification of a scheduled tree shall be undertaken by a suitably qualified arborist using 'Best Arboricultural Practice'. It also provides that contravention of this standard is a non-complying activity.
86. Identical submissions were received on this rule from *Vodafone NZ Ltd* (OS576.31), *Spark New Zealand Trading Limited* (OS923.31) and *Chorus New Zealand Limited* (OS925.31). They requested that the term "best arboricultural practice" be replaced with "accepted modern arboricultural practice", and that the activity status for contravention of this standard be amended to provide for work required for network utility projects to be a restricted discretionary activity.
87. In her s42A Report, Ms Rodgers did not agree with the submissions as she considered that the amendment sought would result in a lack of certainty as to what is or is not "acceptable" and, therefore, would be a less effective method of achieving the objective. She noted that "Best Arboricultural Practice" is an evolving standard developed by the New Zealand Arboricultural Association, which reflects current thinking and general consensus amongst the professional body, and she considered this to be the most appropriate standard to refer to for scheduled trees. Ms Rodgers did not specifically comment on the requested change to the activity status for network utilities.
88. In their joint written response to this recommendation, *Vodafone NZ Ltd*, *Spark New Zealand Trading Limited* and *Chorus New Zealand Limited* said an alternative approach would be to remove reference to the "Best Practice Guidelines by the New Zealand Arboricultural Association Incorporated" from the definition of 'Best Arboricultural Practice'.
89. Their written response appended evidence from Mr Karl Burgisser of Arborlab Consultancy Services Limited. In this evidence, Mr Burgisser observed that the Best Practice Guidelines are not always a true reflection of accepted modern standards. He considered that reference to 'Accepted Modern Arboricultural Practice' would include the NZAA Guidelines, but would also enable other standards and modern practices to be considered and used, and was therefore a more appropriate term to use in the rule.

3.5.2.1 Decision and reasons

90. We reject the submissions of *Vodafone NZ Ltd* (OS576.31), *Spark New Zealand Trading Limited* (OS923.31) and *Chorus New Zealand Limited* (OS925.31) to replace 'best arboricultural practice' with 'accepted modern arboricultural practice', and to provide for work required for network utility projects, as a restricted discretionary activity. Accordingly, Rule 7.5.1 is retained without amendment.
91. The main reason for our decision is that the joint evidence from the submitters does not seem to raise strong objection to the term 'best arboricultural practice' per se. The main concern seems to be that by referring to the Best Practice Guidelines of the NZ Arboricultural Association, it doesn't therefore include trenchless methods for undergrounding utilities. As discussed above, provision is to be made in Rule 7.5.2 for trenchless methods. Consequently, there is no need to change the definition or wording of "Best Arboricultural Practice", as this is only used in relation to modification of a tree. There is also therefore, no need to change the activity status for work concerning network utilities.
92. We have some concern that the requirement to use fully qualified arborists in all cases may appear onerous, particularly where the work is minor and the person undertaking the work is otherwise well experienced and able to carry out the work with no damage to the health of the tree. For that reason, and while there were no submissions on this

aspect, we recommend that the need is investigated for a future Plan change, and Council may be able to offer some assistance in this regard.

3.6 Appendix A1.3 Schedule of trees, and mapping of scheduled trees

93. Appendix A1.3 contains a list of the Scheduled Trees. Those trees are also shown on the Planning maps in the 2GP.

3.6.1 Section 42A Report, evidence and submissions

94. In her s42A Report, Ms Rodgers' recommendation in relation to each submission reflected the evaluation of each tree undertaken by DCC Parks Officer – Trees, Mr Aidan Battrick, and DCC Landscape Architect, Mr Barry Knox (appended to the s42A Report as Appendix Two).
95. The statement of evidence presented by Mr Barry Knox at the hearing included:
- STEM assessments for trees (successfully) nominated for inclusion in the significant trees Schedule (his Appendix 2)
 - STEM assessments for trees (unsuccessfully) nominated for inclusion in the significant trees schedule (his Appendix 3); and
 - updated STEM assessments and comments for trees that had been the subject of submissions (his Appendix 4).

3.6.2 77 Riccarton Road West Mosgiel (T1250 and T1251)

96. The *Miller Family Trust* (OS421.8) requested that an additional Chestnut tree at 77 Riccarton Road be added to Schedule A1.3 in addition to existing scheduled trees T1250 and T1251.
97. The evaluations from Mr Knox and Mr Battrick appended to the s42A Report advised that the Chestnut tree did not qualify under the STEM assessment, and they recommended that it should not be added to the schedule.
98. Mr Brian Miller, on behalf of the *Miller Family Trust* (OS421.8) provided a written statement to support the request. He said the assessment appended to the s42A Report referred to the wrong tree (a Chestnut) and that the tree the submitter was recommending for inclusion in the Schedule was in fact a Silver Birch.
99. Mr Knox's statement of evidence acknowledged this mistake. However, the updated STEM assessment showed that the Silver Birch tree had a main trunk cavity, and it was recommended that it not be added to the Schedule.
100. In his written statement Mr Miller suggested that the injury to the tree is "in no way endangering the safety of anybody".

3.6.2.1 Decision and reasons

101. We reject the submission from the *Miller Family Trust* (OS421.8), and do not add the requested tree to the Schedule.
102. The reason for the decision is that we accepted the expert evidence, and agreed that the tree is not appropriate for inclusion in the Schedule due to the large cavity in the

trunk, and there is no guarantee that the root structure hasn't been affected so that the tree does pose a safety risk.

3.6.3 27 King Street Mosgiel (T666)

103. *CC Otago Ltd* (OS276.1) submitted that T666 (a Pin Oak) be removed from the Schedule.
104. The evaluation from Mr Knox and Mr Battrick appended to the s42A Report noted that a resource consent application for removal of the tree had recently been considered (LUC-2015-578). As part of that consent process a new STEM assessment had been prepared and this showed a score of 156. The decision from the hearing was that the application was declined. Consequently, Mr Knox and Mr Battrick recommended that, to be consistent with that decision, the tree should be retained on the Schedule in the 2GP.
105. Mr Craig Horne spoke on behalf of *CC Otago Ltd* (OS276.1), and tabled a report from Mr Sean Hancock (Eco Tree Care Ltd) which concluded that overall the tree was in relatively good health but would benefit from removal of storm damaged material, and other maintenance pruning work.
106. In his statement of evidence at the hearing, Mr Knox did not see any reason for the evaluation appended to the s42A Report to be changed.

3.6.3.1 Decision and reasons

107. We reject the submission from the *CC Otago Ltd* (OS276.1), and retain tree T666 in the Schedule.
108. The reason for the decision is that we accept the expert evidence of Mr Knox and Mr Battrick who have evaluated the tree as being appropriate for inclusion using the STEM assessment.

3.6.4 32 Gordon Road Mosgiel (T071)

109. *CC Otago Ltd* (OS276.1) submitted that tree T071 (a Southern Rata) be removed from the Schedule.
110. The evaluation from Mr Knox and Mr Battrick appended to the s42A Report was that the assessment of the tree undertaken in 2013 had identified the tree as a healthy, significant solitary specimen. They said the updated STEM assessment completed in 2016 showed that the tree comfortably met the STEM passing score. Consequently, they recommended that the tree be retained on the Schedule.
111. Mr Craig Horne spoke on behalf of *CC Otago Ltd* (OS276.1) and cited concerns over the growth of the tree, and its effects on the reasonable use of the land, in the long term.
112. In his statement of evidence at the hearing, Mr Knox said an updated STEM assessment showed the tree still met the threshold for inclusion in the schedule, and consequently his recommendation was unchanged.

3.6.4.1 Decision and reasons

113. We reject the submission from the *CC Otago Ltd* (OS276.1) and retain tree T071 in the Schedule.

114. The reason for this decision is that we agree with the expert evidence of Mr Knox and Mr Battrick, which included an updated STEM assessment.

3.6.5 113 Gladstone Road Mosgiel (T040)

115. *Michael Brough* (OS363.5) submitted that tree T040 (a Eucalyptus) be removed from the schedule.
116. The evaluation from Mr Knox and Mr Battrick appended to the s42A Report noted that the tree had been the subject of a resource consent application for its removal in 2014, and the outcome was that the tree was retained but trimming allowed. The property had been subdivided after scheduling of the tree but before the application, and is now on a much smaller site. A new STEM assessment had been partially completed and indicated the amenity values of the tree have reduced. The evaluation indicated that a final recommendation would be made on completion of the new STEM assessment, but an initial response from an amenity perspective was that careful consideration should be given to the proposed removal of this tree.
117. Mr Craig Horne, on behalf of *Michael Brough*, raised concerns that the DCC subsidy to cover works on scheduled trees was insignificant compared to the real cost of works. He also noted that there are a lot of large trees in the vicinity and he did not see the need to protect this tree in particular.
118. An updated STEM assessment appended to Mr Knox's statement of evidence noted that a new dwelling had been constructed close to the tree. It stated that the new STEM assessment showed the amenity values of the tree had reduced, but the condition values had increased. The updated assessment concluded by recommending that T040 be retained on the Schedule.

3.6.5.1 Decision and reasons

119. We reject the submission from *Michael Brough* (OS363.5), and retain existing tree T040 in the Schedule.
120. The reason for the decision is that we agree with the expert evidence presented, which was based on the updated STEM assessment appended to Mr Knox's statement of evidence. We note that should the condition of this tree deteriorate to the extent that it becomes a safety risk it could be re-evaluated and an application made to trim or remove it as a Restricted Discretionary Activity.

3.6.6 552 North Road (T865)

121. Mr *Douglas Hall* submitted that T865 (a Eucalyptus) be removed from the Schedule (OS1068.7) and from the 2GP maps (OS1068.8). *Paul Smith (on behalf of Paul and Susan Smith)* (OS827.1) also requested that T865 be removed from the Schedule.
122. The evaluation from Mr Knox and Mr Battrick appended to the s42A Report advised that the tree had been the subject of a resource consent application for its removal in 2014, the outcome of which had been to retain the tree. The report noted that an updated STEM assessment had been carried out at that time, and that the site had been visited shortly prior to the hearing and it was confirmed that the tree was in the same condition as at the resource consent application was heard.
123. Mr Hall spoke to his submission at the hearing, and circulated photographs. He recommended that the tree be removed from the Schedule (and from the 2GP maps) because of what he described as "a major fault" in the tree, which he believed could result in it falling and damaging a house and power lines.

124. In his statement of evidence at the hearing, Mr Knox did not amend the evaluation appended to the s42A Report.
125. The Panel asked questions of the officers regarding the breadth of consideration given to health and safety risks in tree assessments. Mr Battrick said he did not consider the tree to be a significant health and safety risk. There was some discussion about whether the removal of the word 'significant' from the assessment criteria could change the outcome, but Mr Battrick considered the risk of the tree falling was relatively minor.

3.6.6.1 Decision and reasons

126. We reject the submission from *Douglas Hall* (OS1068.7 and OS1068.8) and *Paul Smith (on behalf of Paul and Susan Smith)* (OS827.1) and we have decided to retain existing tree T865 in the Schedule and on the scheduled trees layer on the 2GP maps.
127. The reason for the decision is that we accept Mr Battrick's expert evidence that the tree is not a significant health and safety risk, and that the risk of the tree falling is relatively minor. We note that should the condition of this tree deteriorate to the extent that it becomes a safety risk it could be re-evaluated and an application made to trim or remove it as a Restricted Discretionary Activity.

3.6.7 649 North Road (T868)

128. Mr *Douglas Hall* (OS1068.13 and OS1068.12) submitted that the location of T868 (a Kowhai) was incorrectly shown in the 2GP and it should therefore be removed from the Schedule.
129. He questioned whether the location of the tree was in fact on the property at 5 Cottle Street. The evaluation from Mr Knox and Mr Battrick appended to the s42A Report did not include any evaluation of this tree. In her s42A Report Ms Rodgers recommended that the submission be accepted in part, by amending the location of T868 on the maps.
130. Mr *Douglas Hall* spoke to his submission at the hearing, reiterating the points made in his original submission. It was noted that if the location of the tree was changed this would necessitate a new assessment and discussion with the landowner.

3.6.7.1 Further relevant information

131. Subsequent to the hearing information was received from officers to the effect that T868 was incorrectly shown on the Schedule, and is identified as an error in the 2GP Errata (F.A1.3 Schedule of Trees). The proposed correction detailed in F.A1.3 is that the tree be removed from the 2GP map.

3.6.7.2 Decision and reasons

132. We reject the submission from *Douglas Hall* (OS1068.13 and OS1068.12).
133. The reason for the decision is that T868 is not on the Schedule, and is identified as a 2GP mapping error for correction.

3.6.8 4 Montecillo Lane/80 Eglinton Road (G037 and T406) and 2 Montecillo Lane (T402)

134. *Morclarke Developments (2009) Limited* submitted that T406 (an Oak) be removed from the Schedule (OS46.1); that the location of T402 (an Oak) be amended to reflect its

correct location at 2 Montecillo Lane (OS46.2); and that scheduled tree group G037 be removed from the schedule and 2GP maps (OS46.3 and OS46.4).

135. The evaluation from Mr Knox and Mr Battrick appended to the s42A Report advised that, with regard to T406, a resource consent had been issued for its removal (LUC-2013-294). It noted that the tree had already been removed from the Schedule, and accordingly it ought to be removed from the 2GP maps.
136. With regard to G037, the evaluation noted that some of the trees in the group had been removed, and that while the remaining trees provided a good balance to on-going property development on the site, they were not worthy of inclusion on the 2GP schedule. Accordingly, it was recommended that G037 be removed from the Schedule.
137. The evaluation did not include comment in respect of T402. In her s42A Report however, Ms Rodgers recommended that the 2GP maps be amended to reflect its correct location.
138. Mr Andrew Robinson appeared on behalf of *Morclarke Developments (2009) Limited* to reiterate the points made in the original submission and to express acceptance of Ms Rodgers recommendations.

3.6.8.1 Decision and reasons

139. We accept the submissions from *Morclarke Developments (2009) Limited* (OS46.1, OS46.2, OS46.3 and OS46.4), and to:
 - remove T406 from the scheduled trees layer on the 2GP maps
 - amend the location of T402 to its correct location on the scheduled trees layer on the 2GP maps, and
 - remove scheduled tree group G037 from Schedule A1.3 and from the scheduled trees layer on the 2GP maps.
140. The reason for this decision is that we note there was agreement between the staff advisers and the submitters, and we accept that the changes appropriately proposed reflect the on-the-ground situation.

3.6.9 556 Highgate (T610)

141. Mr *Robert Hugh Tongue* submitted that T610 (a Red Beech) be removed from the Schedule (OS452.8) and from the scheduled trees layer on the 2GP maps (OS452.7).
142. The evaluation from Mr Knox and Mr Battrick appended to the s42A Report advised that an updated STEM assessment had been undertaken, and the tree did not now meet the passing score, and recommended that the tree be removed from the Schedule.
143. *Mr Tongue* spoke to his submission at the hearing, reiterating the points made in his original submission and acknowledging the support of his submission in the s42A Report.

3.6.9.1 Decision and reasons

144. We accept the submission from *Robert Hugh Tongue* (OS452.8 and OS452.1), to remove T610 from Schedule A1.3, and from the scheduled trees layer on the 2GP maps.

145. The reason for the decision is that we accept the updated STEM assessment prepared by Mr Knox and Mr Battrick which indicates that this tree does not achieve the minimum STEM score required for inclusion on the Schedule.

3.6.10 21 Constitution Street (T351)

146. Ms *Veronica Dalloway* (OS676.3) submitted that T351 (a Bay) be removed from the Schedule.
147. The evaluation from Mr Knox and Mr Battrick appended to the s42A Report advised that the updated STEM assessment did not meet the passing score, and recommended that the tree be removed from the Schedule².
148. Ms Dalloway tabled a STEM assessment prepared by Peter Waymouth of Green Trees Ltd which scored the tree at 108 points, under the 145 points required for inclusion in the Schedule.

3.6.10.1 Decision and reasons

149. We accept the submission from *Veronica Dalloway* (OS676.3), and to remove T351 from Schedule A1.3 and from the scheduled trees layer on the 2GP maps.
150. The reason for the decision is that we accept the updated STEM assessment prepared by Mr Knox and Mr Battrick, which indicates that this tree does not achieve the minimum STEM score required for inclusion on the Schedule.

3.6.11 Cardiff Street road reserve, Middelmarsh (T1064) and 1531 Dunedin-Waitati Road (T1163)

151. The *NZ Transport Agency* submitted that Schedule A1.3 and the 2GP maps be amended to reflect the correct location of T1064, a Wellingtonia, in road reserve in Cardiff Street, Middelmarsh (OS881.163), and of T1163, an Oak, at 1531 Dunedin-Waitati Road (OS881.164).
152. In her s42A Report, Ms Rodgers recommended that the submissions be accepted.
153. Ms Kirsten Tebbutt provided a written statement on behalf of the *NZ Transport Agency* to express their support for the recommendation of Ms Rodgers.

3.6.11.1 Decision and reasons

154. Our decision is to accept the submissions from the *NZ Transport Agency* (OS881.163 and OS881.164), and to:
- amend the location of T1064 to road reserve in Cardiff Street, Middelmarsh, in the Schedule and on the 2GP map, and
 - amend the location of T1163 to the property at 1531 Dunedin-Waitati Road in the Schedule and on the 2GP map.

² It is noted that the s42A Report contains an error, whereby the 'Staff Recommendation' column for this submission refers to a different tree. This is clearly a typographical error, and the Reporting Officer's intent to accept the submission to remove the tree is supported by the evaluation from Mr Knox and Mr Battrick appended to the s42A Report.

155. The reason for the decision is that we accept that the changes proposed are necessary to reflect the on-the-ground situation.

4.0 Other matters raised in submissions

156. The following submissions sought amendments to, or opposed, various Plan provisions, and were not addressed or spoken to at the hearing. The Panel has considered these submissions and agrees with the s42A Report and the reasons contained within it, unless indicated otherwise in the 'Decision' column.

Table 2: Other matters raised in submissions

Submitter, (Submitter Number)	Plan provision	Summary of submission	Decision
<i>Brent Lovelock</i> (OS793.7)	Section 7: Scheduled Trees	Amend the policy framework to provide protection for other forms of vegetation such as hedges	Reject the submission
<i>Brent Lovelock</i> (OS793.2)	Policy 7.2.1.1	Amend Policy to allow for second opinions on the condition of trees subject to consent	Accept in part (no amendment required) – current practice provides for this
<i>Brent Lovelock</i> (OS793.3)	Policy 7.2.1.2	Amend Policy 7.2.1.2 to prevent purchasers of properties with existing scheduled trees on site seeking the removal of these trees	Reject the submission
<i>Knox and Salmond Colleges Board</i> (OS182.2)	Policy 7.2.1.3	Amend Policy 7.2.1.3 to be less restrictive.	Reject these submissions. We note however that Policy 7.2.1.3.b has been amended in response to submissions considered as part of the Plan Overview topic (refer PO 908.3 and others)
<i>University of Otago</i> (OS308.157)		Amend Policy 7.2.1.3 by replacing 'no more than minor' with 'minimised'.	
<i>Vodafone NZ Ltd</i> (OS576.29), <i>Spark New Zealand Trading Limited</i> (OS923.29) and <i>Chorus New Zealand Limited (Chorus)</i> (OS925.29)		Amend Policy 7.2.1.3.c to allow for the modification of a scheduled tree where required to enable the deployment of new network utility infrastructure. Consequentially amend to Rule 7.7.2.1	
<i>University of Otago</i> (OS308.160)	Rule 7.5.1.2 Modification of Protected Trees	Remove Rule 7.5.1.2 Modification of a scheduled tree.	Reject the submission

Submitter, (Submitter Number)	Plan provision	Summary of submission	Decision
<i>University of Otago</i> (OS308.165)	Rule 7.9 Special Information Requirements	Amend Rule 7.9 Special Information Requirements to be consistent with submission points related to 7.2.1.2 - 7.5.2.	Reject the submission
<i>Appendices – Schedule A1.3 – schedule of trees</i>			
<i>Saddle Views Estate</i> (OS458.56)	A1.3 Schedule of Trees	Remove the Schedule of Trees	Reject the submission
<i>Dunedin City Council</i> (OS360.22)	A1.3 Schedule of Trees	Add trees T1055 and T1056 at 312 Stuart St to the Schedule	Reject the submission Note: A resource consent for removal of both trees has subsequently been issued (LUC-2015-243, issued in May 2016).
<i>Douglas Hall</i> (OS1068.11)	A1.3 Schedule of Trees	Reassess and re-consult on all trees entered onto the Schedule in 2001	Accept the submission in part, on the basis that the Schedule has been audited and refined as part of the overall 2GP process.
<i>Bronwyn and James Hegarty</i> (FS2474.3)	A1.3 Schedule of Trees	Oppose OS1068.11 in part (with regard to seeking the permission of private landowners to have trees assessed as significant). It should not be necessary to obtain the approval of the relevant landowner, but are supportive of reassessment of all trees on the Schedule	Accept the submission in part, on the basis that all specific trees that were subject to submissions were re- assessed as part of the 2GP process
<i>Knox and Salmond Colleges Board</i> (OS182.16)	A1.3 Schedule of Trees	Remove T667 (Knox College Lawson's cypress) from 9 Arden Street, Dunedin.	Reject the submission
<i>Dunedin City Council</i> (OS360.20)	A1.3 Schedule of Trees	Remove trees G044 (74 Gladstone Road), T147 & T148 (90 Anzac Avenue) and T296 (527 Castle Street) from Schedule A1.3 - Schedule of Trees, and from the planning maps.	Accept the submission
<i>Self and Beamish Properties Ltd</i> (OS370.1) and <i>Helen Beamish</i> (OS498.2)	A1.3 Schedule of Trees	Remove scheduled trees T1045 & T1046 from Tree Schedule	Accept the submission

Submitter, (Submitter Number)	Plan provision	Summary of submission	Decision
and OS498.3)			
Trevor and Shelley Shiels (OS864.2)	A1.3 Schedule of Trees	Remove scheduled trees T603 and T604 at 421 Highgate from Tree Schedule A1.3.	Reject the submission
Dunedin City Council (OS360.102)	A1.3 Schedule of Trees	Remove Scheduled Tree G020 at 26 Braeview Crescent from Schedule A1.3 (Schedule of Trees).	Accept the submission
<i>Scheduled Trees Layer – 2GP Mapping</i>			
Alma May McGregor (OS10.1)	Planning maps	Remove tree at 586 North Road Normanby Dunedin 9010 from map	Reject the submission
Mercy Dunedin Hospital Limited (OS241.69)	Planning maps	Remove Scheduled Tree T844 from the planning maps	Accept the submission
University of Otago (OS308.428)	Planning maps	Remove the following trees from the maps: T1149, T295 along with adjoining label 'new' and T929.	Accept the submission
University of Otago (OS308.432)	Planning maps	Add Scheduled Tree G118 at 110 Frederick Street to map.	Accept the submission
University of Otago (OS308.453)	Planning maps	Remove reference to T361 from map.	Accept the submission
Dunedin City Council (OS360.101)	Planning maps	Remove Scheduled Tree G20 from map.	Accept the submission
Dunedin City Council (OS360.19)	Planning maps	Remove the following trees that do not appear in schedule from the Scheduled Items - Trees map: G001 G002 G009 G011 G036 G046G048 G052 G066 G078 G085 G086 G088 G092 G101 G104 T004 T025 T028 T030T039 T050 T059 T061 T063 T067 T068 T100 T1005 T1006 T1014 T1021 T1027 T1068T1071 T1073 T1076 T1078 T109 T1097 T110 T1106 T1120 T1121 T1136 T1149 T1154 T116 T1161 T1165 T1166 T1181 T1183 T1192 T1206 T1216 T133 T137 T146 T159 T169 T177 T178 T179 T180 T181 T182 T201 T220 T242 T242 T260 T261 T266 T267 T280	Accept the submission

Submitter, (Submitter Number)	Plan provision	Summary of submission	Decision
		T178 T179 T180 T181 T182 T201 T220 T242 T242 T260 T261 T266 T267 T280 T413 T421 T422 T424 T435 T436 T441 T460 T461 T463 T465 T477 T495 T497 T498 T502 T505 T525 T535 T555 T558 T570 T572 T575 T586 T587 T588 T607 T615 T627 T628 T643 T665 T672 T677 T686 T697 T704 T708 T710 T719 T721 T731 T737 T739 T742 T758 T767 T768 T784 T785 T795 T813 T816 T827 T832 T833 T844 T858 T868 T869 T870 T884 T891 T916 T918 T922 T929 T933 T936 T939 T960 T994	
<i>Trevor and Shelley Shiels (OS864.4)</i>	Planning maps	Remove scheduled tree T607 from maps (maps show T607 but there is no entry for this tree in Schedule A1.3).	Accept the submission

5.0 Minor and inconsequential amendments

157. Clause 16(2) of Schedule 1 of the RMA allows a local authority to make an amendment where the alteration “is of minor effect”, and to correct any minor errors, without needing to go through the submission and hearing process.

158. This Decision includes minor amendments and corrections that were identified by the DCC Reporting Officer and/or by us through the deliberations process. These amendments are referenced in this report as being attributed to “cl.16”. These amendments generally include:

- correction of typographical, grammatical and punctuation errors
- removing provisions that are duplicated
- standardising repeated phrases and provisions, such as matters of discretion, assessment guidance, policy wording and performance standard headings
- adding missing hyper-linked references to relevant provisions (eg. performance standard headings in the activity status tables)
- correctly paraphrasing policy wording in assessment rules
- changes to improve plan usability, such as adding numbering to appendices and reformatting rules
- moving provisions from one part of the plan to another

- rephrasing plan content for clarity, with no change to the meaning
- three trees were also mapped at 17 Melrose Street, 110 Frederick Street and 176 Woodside Terrace, in error with the notation 'new' and have been removed
- trees T116, T117, T118, T119 and T120 are shown in incorrect locations on the 2GP maps (100 School Road North) and have been removed from the schedule and/or the scheduled trees layer of the 2GP maps
- tree T613 is incorrectly shown as being on the site at 618 Highgate, when in fact it is located on the adjoining road reserve. The location has been corrected on the 2GP map and in Schedule A1.3 pursuant to Clause 16(2) of the RMA.

Appendix 1 – Amendments to the Notified 2GP (2015)

Please see www.2gp.dunedin.govt/decisions for the marked-up version of the notified 2GP (2015). This shows changes to the notified 2GP with strike-through and underline formatting and includes related submission point references for the changes.

Appendix 2 – Summary of Decisions

1. A summary of decisions on provisions discussed in this decision report (based on the submissions covered in this report) is below.
2. This summary table includes the following information:
 - Plan Section Number and Name (the section of the 2GP the provision is in)
 - Provision Type (the type of plan provision e.g. definition)
 - Provision number from notified and new number (decisions version)
 - Provision name (for definitions, activity status table rows, and performance standards)
 - Decision report section
 - Section 42A report section
 - Decision
 - Submission point number reference for amendment

Summary of Decisions

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
1. Plan Overview and Introduction	Definition	1.5		Trenchless methods (new)	Add a new definition of 'trenchless methods'	ST 923.32 & others	3.5.1	3.3.11
2. Strategic Directions	Policy	2.4.1.2			Do not amend as requested		3.3.1	
7. Scheduled Trees	Policy	7.2.1.2			Amend policy wording	ST 182.1 ST 308.156 ST 457.52	3.3.2	3.3.4
7. Scheduled Trees	Policy	7.2.1.2			Do not amend policy/provisions to prevent purchasers of properties with existing scheduled trees on site seeking the removal of these trees		4	3.3.4
7. Scheduled Trees	Policy	7.2.1.4			Amend policy wording linked to change to the setback from scheduled tree performance standard to exempt trenchless methods	ST 923.32 & others	3.5.1	3.3.11

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
7. Scheduled Trees	Activity Status	7.3.2.3		Removal and any other work on a scheduled tree that will lead to the death or terminal decline of a scheduled tree	Do not amend as requested		3.4.1	3.3.7
7. Scheduled Trees	Notification Rule	7.4.1			Do not amend as requested		3.4.2	3.3.8
7. Scheduled Trees	Performance Standard	7.5.1		Best arboricultural practice	Retain rule as notified		3.5.2	3.3.9
7. Scheduled Trees	Performance Standard	7.5.2		Setback from Scheduled Tree	Amend the performance standard to only apply to activities that "involve ground excavation or the installation of impermeable surfaces on the ground"	ST 308.161	3.5.1	3.3.11
7. Scheduled Trees	Performance Standard	7.5.2		Setback from Scheduled Tree	Amend the performance standard to exempt activities that use trenchless methods	ST 923.32 & others	3.5.1	3.3.11
7. Scheduled Trees	Assessment of Restricted Discretionary Performance Standard Contraventions	7.6.2.1			Amend guidance to reflect change to Policy 7.2.1.4	ST 923.32 & others	3.5.1	3.3.11

Plan Section	Provision Type	Provision number	New Number	Provision Name	Decision	Submission Point Reference	Decision Report Topic number	S42A Report Section Number
7. Scheduled Trees	Assessment of Non-complying Activities	7.8.2			Amend guidance to reflect change in Policy 7.2.1.2	ST 182.1 ST 308.156 ST 457.52	3.3.2	3.3.4
7. Scheduled Trees	Appendix	A1.3		Schedule of Trees	Retain A1.3		4	3.3.14