

15 December 2023

Norman and Julie Firth
2 Montecillo Lane
Dunedin 9011

Via email: julieandnorm@yahoo.co.nz

Dear Norman and Julie

RESOURCE CONSENT APPLICATION:

**LUC-2023-282
2 MONTECILLO LANE
DUNEDIN**

The above applications for the removal of a Scheduled Tree (T402) at 2 Montecillo Lane, Dunedin, was processed on a publicly notified basis in accordance with section 95 of the Resource Management Act 1991. A Hearing Committee, comprising Independent Chairperson Colin Weatherall and Councillors Sophie Barker and Steve Walker, heard and considered the application at a hearing on Friday 8 December 2023.

At the end of the public part of the hearing, the Panel, in accordance with section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

Following the conclusion of the hearing, a site visit was undertaken by the Hearings Committee.

The Committee has granted consent to the application on 8 December 2023. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicants, Norman and Julie Firth, presented their own case

Council staff attending were:

Campbell Thomson (Senior Planner/Advisor to Committee), Jane O'Dea (Processing Planner), Luke McKinlay (Landscape Architect) and Wendy Collard (Governance Support Officer). Mark Roberts, a Consultant Arborist participated in the hearing via video link.

The following submitters were present at the hearing.

Christine and Graham Ebbett

Jim Moffatt representing Protect Private Ownership of Trees Society (POTS)

Procedural Issues

No procedural issues were raised.

Principal Issues of Contention

The principal issues of contention are as follows:

- The condition and amenity value of the tree
- The risks to property and safety of people associated with the tree
- The practicality of and likely outcome of any remedial work to the tree

Summary of Evidence

Introduction from Processing Planner

Ms O'Dea outlined the application and presented a brief summary of her assessment of the proposal.

Ms O'Dea responded to questions from the Committee. These related to the information received, the age of the tree, replacement planting and practicality of remedial work, as well as the STEM assessments and circumstances of development affecting the tree. Ms O'Dea deferred to expert advice from Mr Roberts regarding the tree condition and Mr McKinlay re amenity issues.

Mr McKinlay commented on STEM assessments, noting that the general practice is for the condition score to be determined by an Arborist, and the amenity score to be determined by a Landscape Architect. He accepted that the submitters opposed to the application had valid concerns about amenity, but advised that from a landscape point of view, the tree must be assessed against the amenity criteria set out in the STEM methodology. These are stature, visibility, proximity, role and climate. In response to questions from the Committee, Mr McKinlay clarified the meaning of the role criteria, noting how the context of this tree had changed since the land was subdivided and developed. In regard to the matter of risk from falling branches Mr McKinlay advised that this was a matter for Mr Roberts to comment on.

Mr Roberts commented on the concerns about risks associated with the tree. He advised that he considered that the risks were low, as Oak trees are generally stable and falling limbs tend to land on the ground directly under the canopy. In response to questions, he commented on the absence of any recent stem assessment, as well as the costs of removal of the tree compared with the costs of remedial work considered necessary to maintain this tree.

In regard to the STEM assessment, Mr Roberts indicated that if a tree is already on the district plan it did not need to be reassessed, but he was comfortable that the subject tree would not meet the stem assessment in the condition that it is in now if scored today. He confirmed the key change is that it had lost points for form.

Ms O'Dea noted that situations with trees change over time and a stem assessment is a snapshot in time. She was not aware of a stem assessment being done this year for the tree.

The Applicant's Case

Mr Firth spoke briefly to the application and he and Mrs Firth then responded to questions from the Committee.

They advised that their starting point was the safety of the tree with 5 branches having fallen off, and the decline of the tree. They noted that the tree is different from when it was put on the schedule and did not have the same form.

Mr Firth advised that they had purchased the property in 2020, and commented on the circumstances related to this, including travel restrictions arising from the COVID epidemic. Mrs Firth commented on the incidents of fallen branches since then, and their concerns regarding safety.

Mr and Mrs Ebbett spoke to their submission. They noted that they were for trees but considered that given the circumstances of tree T402, this tree should be removed. They considered the health of the tree had been compromised by the subdivision and development of the land, and that the tree is an exotic species better suited to a forest or parkland. They advised that they had lived at Montecillo Lane since 2017 and were one of the original owners. Montecillo Lane is a privately owned lane with the owners owning the lane and the bush area. Tree 402 is isolated from this bush area.

Mr Moffatt expressed the view of POTS on the application.

Processing Planner's Review of Recommendation

Ms O'Dea reviewed her recommendation in light of the evidence presented at the hearing, maintaining her recommendation that consent be granted. She noted that the District Plan does include a section where a tree could be removed from schedule for moderate safety reasons.

Applicants Right of Reply

Mr Firth thanked the Committee for consideration of the application.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions in Section 7 of the 2GP, which sets out the policy framework, rule provisions and relevant assessment criteria for resource consent applications concerning Scheduled Trees.

Statutory provisions considered included Sections 104, 104B and 104D.

Main Findings on Principal Issues of Contention

The Hearing Committee has considered the evidence heard, the relevant statutory and plan provisions, the principal issues in contention. The main findings on the principal issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken by the Committee during the public-excluded portion of the hearing. This added physical reality to the Committee's considerations.

*That pursuant to Section 34A(1) and 104B and after having regard to Sections 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 **non-complying activity** to remove Scheduled Tree T402 on the site at 2 Montecillo Lane, Dunedin legally described as Lots 1 and 19 DP477748 (Record of Title 662696).*

Reasons for this Decision

1. The Committee agrees that the proposal is a non-complying activity under the relevant provisions of the proposed District Plan (2GP) which are beyond legal challenge and deemed operative by Section 86F of the RMA.
2. The Committee agrees that in this case there is no relevant permitted baseline that could be applied to the effects assessment that would provide for the disregarding of effects of the proposal.
3. The Committee notes that their site visit confirmed that the tree canopy is much reduced from the form evident in Council records, when it was assessed for inclusion in the District Plan Schedule. Having regard to the expert opinion of the Arborists for the applicant and Council, the Committee accept that the close proximity of residential buildings and curtilage to the tree, and hard surfaced areas established for the subdivision access, parking, and driveways, have adversely impacted on the tree, and necessitated past remedial works. While the Committee are satisfied that the tree retains some vigour and visual character, the character of the tree has been significantly diminished by the removal of many tree limbs.
4. The Committee observed that public viewpoints of the tree are limited, and there are a number of mature trees in the surrounding environment, including the other scheduled trees within the Montecillo Lane subdivision. Given the limited extent of the remaining limbs of T402, the Committee concur with the assessment of the Council's Landscape Architect regarding the effects on amenity of the removal of the tree. The Committee were mindful of the views of submitters opposed to the application about the positive contribution of the tree to amenity, and the probable history of the tree as part of the former Montecillo site. However, the Committee concluded that the present state of the tree and the existing environment in the vicinity of the tree were not conducive to the ongoing protection of the tree.
5. The Committee had regard to the risks to safety associated with the tree. While noting that there were areas of disagreement between the Arborists on this matter, the Committee were satisfied that some risks did exist, whether they were confined to the land immediately beneath the tree canopy spread or adjacent land. While the Committee consider the likelihood of the tree falling are low, they do consider the height and exposed nature of what currently remains of the tree canopy is likely to contribute to the safety risks from storm damage. Having regard to evidence from both arborists, it is accepted that the degree of risk will increase over time if nothing is done to halt the tree's decline.
6. After consideration of the matters noted above, The Committee agree with the assessment from the planner that the adverse effects of the removal of tree T402 will be no more than minor.
7. As the Committee considers the proposal will not give rise to more than minor adverse environmental effects the proposal satisfies the effects limb of the gateway tests contained in Section 104D of the RMA. As such, the Committee are, therefore, able to consider granting consent to the proposal.
8. The Committee considered the practicality of remedial action to address the decline of the tree were the consent application to be declined. Bearing in my mind the Committee can only impose conditions on the granting of a consent, the Committee are mindful any remedial action would require a new resource consent application. The Committee are satisfied on the basis of the expert opinion of the arborists that the only viable alternative to removal, is substantial and ongoing pruning, either as outlined by Mr Roberts, and/or the methods identified by Mr Ritchie. The evidence indicates that this will involve a long timeframe and several pruning events. If

successful, the decline of the tree may be reduced, but the outcome will further reduce what remains of the amenity value of the tree. Consequently, the Committee concur with the view of Mr Roberts that remedial action is impractical for tree T402. After observing the extent of vegetation immediately surrounding the tree and mature trees in the wider vicinity, the Committee did not consider it necessary to require planting of a replacement tree specimen.

9. The Committee accepts the assessment of the planner that the proposal is inconsistent with but not contrary to the key relevant objectives and policies of the Proposed 2GP.
10. Overall, the Committee consider that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Right of Appeal

Pursuant to Section 120(1A) of the Resource Management Act 1991, no right of appeal to the Environment Court against the whole or any part of this decision exists for the following:

- (a) *A boundary activity, unless the boundary activity is a non-complying activity;*
- (b) *A subdivision, unless the subdivision is a non-complying activity;*
- (c) *A residential activity, unless the residential activity is a non-complying activity.*

(Refer Section 87AAB of the Act for definition of “boundary activity”, and refer to Section 95A(6) for definition of “residential activity”).

For all other applications, 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 Mail Centre
Christchurch 8013

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Commencement of Consent

As stated in section 116 of the Resource Management Act 1991, this consent will 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.

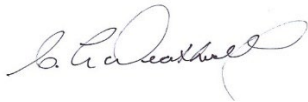
Monitoring

Section 35(2)(d) of the Resource Management Act 1991 requires every council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and

number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the consent is for removal of a tree, this consent will require one inspection.

Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Colin Weatherall', with a stylized flourish at the end.

Colin Weatherall
Chair
Hearings Committee



Consent Type: Land Use Consent

Consent Number: LUC-2023-282

Purpose: removal of a Scheduled Tree (T402)

Location of Activity: 2 Montecillo Lane, Dunedin.

Legal Description: Lots 1 and 19 DP477748 (Record of Title 662696).

Lapse Date: 15 December 2028, unless the consent has been given effect to before this date.

Conditions

1. *The proposed activity must be undertaken in general accordance with the information provided with the resource consent application received by the Council on 18 July 2023, except where modified by the following conditions.*
2. *The removal of the tree shall be undertaken by a suitably qualified person and in accordance with arboricultural best practice.*

Conditions to be met prior to site works commencing

3. *The consent holder must supply to the Council at rcmonitoring@dcc.govt.nz in writing at least five (5) working days prior to the works commencing the following information:*

(a) The contractor who will be undertaking the works including the contact details of the contractor;

(b) The date the tree is to be removed.

Conditions to be met at commencement of, or during, site works

4. *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 removal works.*
5. *The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of T402 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

6. *Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise.*



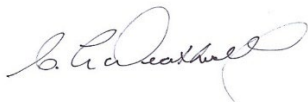
7. *No work is to be undertaken on Sundays or Public Holidays, nor between 8.00pm to 7.30am Weekdays or Saturdays.*

Advice Notes:

General

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

Issued at Dunedin on 15 December 2023



Colin Weatherall
Chair
Hearings Committee