

2 April 2024

Janice and Michael Bell
4C Will Street, Abbotsford
Dunedin 9018

Via email: mandjbell@xtra.co.nz

Dear Janice and Michael

RESOURCE CONSENT APPLICATION:

LUC-2023-346
4C WILL STREET, ABBOTSFORD,
DUNEDIN

The above application for the removal of a Scheduled Tree (T1191) at 4C Will Street, Abbotsford, 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 Ros Day-Cleavin and Councillors Jim O'Malley and Andrew Whiley, heard and considered the application at a hearing on Wednesday 20 March 2024.

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 2 April 2024. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicants, Janice and Michael Bell, presented their own case.

Council staff attending were:

Campbell Thomson (Senior Planner/Advisor to Committee), Jane O'Dea (Processing Planner), Luke McKinlay (Landscape Architect), Mark Roberts (Consultant Arborist) and Rebecca Murray (Governance Support Officer).

One submitter, Jim Moffatt (representing Protect Private Ownership of Trees Society (POTS)) attended and presented at the hearing.

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.

The Applicant's Case

Mr and Mrs Bell spoke to the application and then responded to questions from the Committee.

They advised that they had purchased the property approximately 7 years ago and at that time did not know the tree was scheduled under the District Plan. They commented on the incidents of fallen branches since then, and their concerns regarding safety from tree limbs and branches above their house. They expressed concerns that the root system had damaged the path on their property and the shared driveway on the western side boundary of the site. They considered that the root system would result in further damage including to the foundations of their house. Leaves dropping from the tree onto the footpath and creating a slippery surface for pedestrians was also highlighted as a safety concern.

Mr Hagendorn, arborist for the applicant, was unable to attend the hearing. Mr Graham, a builder who provided a letter in support of the application, was also unavailable to attend the hearing. In response to Committee questions, Mr Bell confirmed that they understood Mr Graham worked on the duplex at the property at the time of construction. However, he was unable to confirm if Mr Graham held specialist expertise in the effects of large trees on the safety of property or people.

Submitter Presentation

Mr Moffatt expressed the view of POTS on the application. He commented that the scope of the hearing related to the removal of T1191, not its replacement, and felt that any suggestion of planting a new tree should not form part of any decision. He presented a model (provided by a POTS member) to illustrate how dangerous an urban tree can be if blown over in a severe storm.

Council Officer's Evidence

In response to Committee questions, Mr Roberts advised that the installed life expectancy of a cabling system was approximately 8 years and that it would require an ongoing maintenance and replacement. This was not an option that he would recommend in this case. He confirmed that in his view, if root barriers had been installed at the time of construction of the duplex, there would normally be clear physical evidence on the site.

Mr McKinley explained his assessment on amenity and confirmed that in his view the loss of the tree will result in localised adverse effects that are more than minor. He further noted that there is a cluster of trees and other scheduled trees in the immediate area, and that the public amenity benefits are less evident in the wider Abbotsford and Green Island areas.

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 confirmed for the Committee that there is no direction in the 2GP which would require the applicant to offer a replacement tree, or an ecological assessment on the effects of the proposal on birdlife. In any case, she noted there was no evidence to suggest that any adverse effects to birdlife would result from the removal of the tree.

Applicants Right of Reply

Mr and Mrs Bell emphasised their concerns about safety and commented that to their knowledge the tree does not support abundant birdlife.

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 T1191 on the site at 4C Will Street, Abbotsford, Dunedin legally described as Lot 1 Deposited Plan 469402, held in Record of Title 631852, subject to the conditions imposed under Section 108 of the Act, as shown in the attached certificate.*

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. On their site visit, the Committee observed that there is a cluster of mature trees in the immediate surrounding environment, including other scheduled trees. The Committee concur with the assessment of the Council's Landscape Architect that in this context the removal of T1191 may not be as noticeable. The Committee were mindful of the view of submitter Linda Reynolds (7 Will Street) who noted the positive contribution of the tree to amenity in her written submission, 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. In reaching this view, the Committee also noted the limited view of the tree in the wider Abbotsford and Green Island areas.
4. The Committee had regard to the risks to safety associated with the tree and noted that the two arborists are generally in agreement that while imminent tree failure is unlikely to occur, the tree does pose risks to people and property. The Committee accepts the evidence of Mr Roberts that while the risk posed by the tree is currently low, the potential consequence of the complete or partial failure of the tree would be catastrophic for property and people. Having regard to evidence from both arborists, it is accepted that the degree of risk will increase over time if nothing is done to manage the risks presented by this tree.
5. The Committee considered the potential risks of other property damage resulting from the tree's root systems, including to the foundations of the house, the shed on site, plumbing damage to the house and adjoining properties, as well as damage to pathways and the shared driveway. The Committee accepts the assessment of the planner that the tree's roots could compromise the foundations of the house and plumbing drainage to the house and adjoining properties at 4 and 4B Will Street, and in reaching this view noted that both arborists agreed this is a likelihood.
6. The Committee further accepts the planner's assessment where she states that the cracking and lifting of paths and footpaths is not unusual where trees are growing nearby. The Committee notes that their site visit confirmed that the extent of damage that has occurred to date appears to be reasonably minor. We accept the planner's conclusion that these factors alone do not provide sufficient justification to remove the tree at this time.
7. The Committee considers the proposal will likely result in adverse effects on amenity values of the immediate locality that will be more than minor and, on this basis, the first 'gateway' test of the Section 104D of the RMA is not met. However, the Committee considers the proposal satisfies the second 'gateway' test in that the proposal is either consistent or inconsistent (and not contrary) with the relevant objectives and policies of the Scheduled Trees sections of both the operative and proposed plans. 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 safety concerns of the tree were the consent application to be declined. The Committee accepts Mr Roberts' evidence that the extent of pruning required to address the perceived risk may result in further safety concerns and a reduction in amenity. The evidence also indicates that cabling (as suggested by Mr Hagendorn) would be a temporary and costly intervention that would not address the potential long-term damage to the house foundations and plumbing. Consequently, the Committee concur with the view of Mr Roberts that remedial action is impractical for tree T1191 and that there is no viable alternative to removal.

9. 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.

A handwritten signature in black ink, appearing to read 'Ros Day-Cleavin', with a stylized, cursive script.

Ros Day-Cleavin
Chair
Hearings Committee



Consent Type: Land Use Consent

Consent Number: LUC-2023-346

Purpose: Removal of a Scheduled Tree (T1191)

Location of Activity: 4C Will Street, Abbotsford, Dunedin.

Legal Description: Lot 1 DP469402 (Record of Title 631852).

Lapse Date: 2 April 2029, 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 11 September 2023, and further information received on 28 October 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.*
4. *At least five (5) working days prior to the works commencing, the consent holder must advise the owners and occupiers of 4 and 4B Will St of the date the tree is to be removed.*
5. *Prior to commencement, the consent holder must obtain any necessary permit or "close approach" consent from the network utility operator responsible for the powerlines adjoining the site.*

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

6. *All waste generated by the removal works shall not cause a nuisance and shall be suitably disposed of within 7 days of the completion of the removal works.*
7. *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

8. *Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise.*
9. *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 2 April 2024



Ros Day-Cleavin
Chair
Hearings Committee