

28 June 2023

T A Byers
100 Cannington Road
Dunedin 9010

Via email: darryl@terramark.co.nz

Dear T A Byers

RESOURCE CONSENT APPLICATION:

**LUC-2023-61
100 CANNINGTON ROAD
DUNEDIN**

INTRODUCTION

- [1] Your application to remove the scheduled tree (T285) at 100 Cannington Road was processed on a publicly notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991 (the Act). No submissions in opposition were received in respect of the application but a submission was received in support. However, the submitter provided written confirmation on 31 May 2023 that they no longer wish to be heard, and the applicant similarly did not request a hearing. Pursuant to Section 100 of the Resource Management Act 1991, it was determined that a hearing was not required, and the application was considered by the Resource Consents Manager, under delegated authority, on 23 June 2023.
- [2] I advise that the Council has **granted** consent to the application. The decision is outlined below, and the decision certificate is attached to this letter.

DESCRIPTION OF SITE AND LOCATION

- [3] The subject site is a rear site located on the north-eastern side of Cannington Road and has a total area of approximately 517m². There is a two-storey dwelling located towards the centre and eastern portion of the site. Access to the site is provided from Cannington Road via a formed vehicle crossing and Right of Way over 100A Cannington Road.
- [4] There is a scheduled tree - Podocarpus totara ('Totara') – located near the south-western corner of the site. The tree is approximately 14m in height with a natural dripline (the outer edge of the canopy) estimated to be approximately 12.5m from the tree and the trunk of the tree is setback approximately 2.5m from the nearest portion of the existing dwelling. The tree listed as 'T285' in Appendix A1.3 of the Proposed Second-Generation Dunedin City District Plan ('Proposed 2GP').
- [5] The site is legally described as Lot 2 Deposited Plan 24382 held in Record of Title OT16B/816. There are no legal interests registered on the Record of Title which are relevant to this application.

DESCRIPTION OF PROPOSAL AND BACKGROUND INFORMATION

- [6] The original resource consent application prepared by the applicant's agent – Darryl Sycamore (Resource Management Planner - Terramark) sought to remove the scheduled Totara tree located

on the site primarily due to the perceived health and safety risks from the tree. The summary of reasons for the proposed removal of the tree are as follows:

- a. "The totara tree has grown to the extent that it is causing a number of effects on the dwelling and no pruning or modification can realistically manage the effects of the tree".
- b. There are concerns that the roots will cause significant damage to the foundations of the house, and the applicant's plumber "Blair McNabb Plumbers" suggests that foundation damage has either occurred or is likely to occur given the proximity of the tree from the dwelling footing. There are also concerns with the roots affecting the infrastructure in the surrounding area.
- c. The roots are displacing the soils within the land around the dwelling with paving tiles being uplifted and unable to level the site to restore a flat outdoor living surface – a potential trip hazard.
- d. The leaves are causing blockages to the drainage and associate pump in front of the garage that has result in damage to the pump (which had to be replaced on one occasion) and has caused blocking and flooding periodically.
- e. The leaves are also noted to fill the spouting and once caused water damage to internal gip due to blockage.
- f. Concerns during high wind events that the tree branches may cause damage to the dwelling and causing anxiety.
- g. Shading issues from the tree.

[7] No technical comments or assessment were provided by the applicant from a qualified arborist related to the above health and safety concerns to people and property. The original application noted that the tree was in good health and that no arborist report was considered necessary as there is '*no contest regarding the significance and contribution of the tree*'.

[8] Letters of support (for the removal of the tree) from the occupiers of the adjoining properties at 102 Cannington Road, 100A Cannington Road, and 98 Cannington Road were provided with the application. The summary of the letters are as follows:

- a. Ann-Marie Gray (100A Cannington Road) raised concerns about:
 - *A loss of sunlight and the safety risks associated with the frosty courtyard.*
 - *The blocking of spouting's.*
 - *Ongoing anxiousness arising from potential branch fall during high wind events.*
 - *The damage to property from the roots.*
 - *The size and location of the tree not suitable for a suburban residential area.*
- b. Bernard McDonell (98 Cannington Road) raised concerns about:
 - *The increased growth of the tree in recent years and the ongoing safety concerns to the surrounding neighbours especially in strong winds.*
 - *The position of the tree within a 'high density location'.*
- c. Dave Craw (102 Cannington Road) raised concerns about:

- *The upper branches of the tree being in close proximity to the electricity wires and internet cable for his property and the growth of the tree is considered to inevitably affect these connections.*
 - *Repeated maintenance being time-consuming and would result in the tree to be unbalanced and effects its visual appearance.*
 - *Nuisance from falling leaves.*
 - *Shading effects.*
- [9] Mr Sycamore concluded that the tree would continue to grow and dominate the site and cause constant nuisance to the owners and the problems resulting from the tree will only continue to increase in frequency and severity as the tree matures.
- [10] A further information request pursuant to section 92 of the RMA was sent to Mr Sycamore on the 6 March 2023. It was requested that an assessment against the relevant objectives and policies of the Proposed 2GP be provided and that an arborist assessment be provided in relation to the health and safety concerns and the impacts on the property and infrastructure associated with the tree that were raised in the application. Mr Sycamore declined to provide an arborist assessment and wished to rely on the Council's arborist assessment and comments regarding these matters.
- [11] The Council's Arborist, David Glenn, reviewed the application and visited the site, and concluded that:
- There are "no concerns as to regard of health and safety with this tree and the surrounding people and property."
 - "There are no signs that the tree has any risk factors that would make it susceptible to whole or partial tree failure."
 - Acknowledged there are nuisance value to the tree leaves/ needles that would require routine maintenance.
- [12] Further details of Mr Glenn's assessment are discussed further below. However, Mr Glenn, also suggested that the original STEM evaluation for this tree in 2001 appeared to be over scored.
- [13] After Mr Glenn's assessment, Mr Sycamore provided further information on 16 March 2023 noting that the Council's original STEM (Standard Tree Evaluation Method) evaluation for this tree in 2001 was over-inflated in his view and that it was incorrectly identified for inclusion in the schedule.
- [14] Follow up correspondence was held with Mr Sycamore to confirm whether the applicant had engaged their own arborist regarding the comments regarding the original STEM evaluation being over-inflated. Mr Sycamore commented that advice was sought from another arborist but noted the applicant will not formally engage the arborist for their expertise in relation to this application. Furthermore, Mr Sycamore did not provide any evidence of correspondence or comments from the arborist who provided the advice regarding the original STEM evaluation being over-inflated.

Background to STEM analysis

- [15] The restriction on removal or modification of scheduled trees under Section 7 of the Proposed 2GP is limited to a specific list of trees included in Appendix A1.3 Schedule of Trees. All trees listed in the schedule have been assessed using the STEM evaluation.
- [16] The STEM evaluation method has three distinct components including condition (health) of the tree, the amenity (community benefit) that it provides, and an additional 'bonus score' for

notability (which are not always attributed). Regarding the assessment of 'Condition' and 'Amenity', each tree is assessed and allocated points for the following factors:

- (i) Form
- (ii) Occurrence
- (iii) Vigour and vitality
- (iv) Function (usefulness)
- (v) Age
- (vi) Stature
- (vii) Visibility
- (viii) Proximity of other trees
- (ix) Role in the setting
- (x) Climatic influence

[17] Items (i)-(v) are in relation to the condition of the tree. Items (vi)-(x) are in relation to the amenity the tree provides. Regarding its notability, points are allocated for recognition factors such as 'feature', 'association', 'commemoration', 'remnant', 'rarity' etc.

[18] The points received for each factor are totalled. It is noted that for Dunedin City Council, any tree that is allocated a total of 147 points or more is considered 'significant' and generally worthy of inclusion in the District Plan's schedule of trees. Accordingly, a STEM score of 147 points was therefore the 'benchmark' for considering whether the tree is 'significant'. However, it is note that the STEM score of 147 points is not a universal 'benchmark' and other Councils in other cities may use a different score as their 'benchmark' for a tree to be included in a schedule for protection.

[19] The Totara tree (T285) on the subject site had an original STEM score of 156 points (87 for condition and 69 for amenity) at the time of assessment in 2001 as detailed below:

Condition Evaluation						
POINTS	3	9	15	21	27	SCORE
Form	Poor	Moderate	Good	Very good	Specimen	15
Occurrence	Predominant	Common	Infrequent	Rare	Very rare	15
Vigour & Vitality	Poor	Some	Good	Very good	Excellent	15
Function	Minor	Useful	Important	Significant	Major	15
Age (yr)	10 yrs. +	20 yrs.+	40 yrs. +	80 yrs. +	100 yrs. +	27
sub-total points						87
Amenity Evaluation						
POINTS	3	9	15	21	27	SCORE
Stature (m)	3 to 8	9 to 14	15 to 20	21 to 26	27 +	9
Visibility (km)	0.5 - 1.0	1.0 -2.0	2.0 -4.0	4.0 - 8.0	8.0 - >	3
Proximity	Forest	Parkland	Group 10 +	Group 3 +	Solitary	27
Role	Minor	Moderate	Important	Significant	Major	15
Climate	Minor	Moderate	Important	Significant	Major	15
sub-total points						69

ACTIVITY STATUS

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

- [21] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.
- [22] The Proposed 2GP was notified on 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. Some rules became fully operative following the close of submissions, where no submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved. There are no rules relevant to the zoning of the site that have been appealed. There have also been no appeals to any of the rules relevant to this application. Therefore, the rules of the ODP are considered inoperative in accordance with Section 86F of the Resource Management Act 1991 and the relevant provisions under the Proposed 2GP can be considered fully operative in this instance.

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

- [23] The subject site is zoned **General Residential 2** under the Proposed 2GP and subject to the Variation 2 Mapped Area. The subject tree is identified as a scheduled tree – T285 (Podocarpus totara).
- [24] Cannington Road is classified as being a local road under the Road Classification Hierarchy Mapped Area.

City Wide Activity

- [25] The proposed removal of the scheduled tree that will lead to the death or terminal decline of the tree is provided for as a **non-complying activity** under Rule 7.3.2.3 of the Proposed 2GP.

Overall Activity Status

- [26] Overall, the application is considered to be a **non-complying activity** under the Proposed 2GP.

NOTIFICATION AND SUBMISSIONS

- [27] No written approvals were submitted with the application.
- [28] Rule 7.4.1.1 specifically requires the proposed removal of the scheduled tree that will lead to the death or terminal decline of the tree to be publicly notified in accordance with Section 95A of the RMA. Therefore, in accordance with the notification decision pursuant to Section 95 of RMA approved on the 17 April 2023, the application was publicly notified on 20 April 2023.
- [29] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal which included the owners of the properties that are adjacent to the site and that may have clear sightlines towards the tree. Submissions closed on 22 May 2023.
- [30] One submission in support was received by the close of the submission period.
- [31] No late submissions were received at the time of this report.
- [32] The submission in support was from Protect Private Ownership of Trees Society (POTS) who considered the location of the tree is inappropriate due to the potential growth of the tree, and the adverse effects the tree has on the applicant and the three adjoining neighbours (presumably the ones that had submitted letters of support).

- [33] The submission indicated that POTS wished to be heard at a hearing for the application. However, Mr Jim Moffat (on behalf of POTS) provided an email on the 31 May 2023 to confirm they now longer wish to be heard at a hearing. This was following consultation by Mr Sycamore with Council and Mr Moffat about the need for a hearing.

Requirement for hearing

- [34] It is considered that there is no need for a hearing of the application in accordance with Section 100 of the RMA due to the following reasons:
- a. It is recommended that resource consent be granted to the proposed activity (as per the detailed assessment below).
 - b. No submissions in opposition were received in respect of the application.
 - c. Neither the applicant nor submitter in support wish to be heard at a hearing.
- [35] Accordingly, based on consultation with the Chairperson of the Consents Hearings Committee, it was determined that a hearing is not necessary, and that the decision can be made under delegated authority.

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [36] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including-
- a) *Any positive or adverse effect; and*
 - b) *Any temporary or permanent effect; and*
 - c) *Any past, present, or future effect; and*
 - d) *Any cumulative effect which arises over time or in combination with other effects— regardless of the scale, intensity, duration or frequency of the effect, and also includes –*
 - e) *Any potential effect of high probability; and*
 - f) *Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

- [37] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the assessment of effects of the activity.
- [38] Under the Proposed 2GP, the removal of a scheduled tree that is: dead, in terminal decline or with extreme failure, or subject to a court order for removal is a restricted discretionary activity. In addition, the modification of a scheduled tree is also a restricted discretionary activity, subject to compliance with the 'best arboricultural practice' performance standard.
- [39] The Proposed 2GP therefore provides no permitted baseline for any form of work on a scheduled tree or the removal of a scheduled tree.

Assessment of Effects

- [40] The activity status of the proposal has been deemed a **non-complying activity** overall. While Council's discretion is not limited to certain matters for non-complying activities the Rule 7.8.2.1

of the Proposed 2GP lists relevant matters as guidance when assessing the proposed non-complying activity which are listed below.

Relevant objectives and policies (priority considerations)

- a. *Objectives 7.2.1, 2.4.1*
- b. *Policy 2.4.1.2*
- c. Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:
 - i. *there is a significant risk to personal/public safety or a risk to personal safety that is required to be managed under health and safety legislation;*
 - ii. *the tree poses a substantial risk to a scheduled heritage building or scheduled heritage structure;*
 - iii. *there is a moderate to significant risk to buildings;*
 - iv. *the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities;*
 - v. *removal of the tree will result in significant positive effects in respect of the efficient use of land; or*
 - x. *removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree (Policy 7.2.1.2).*

[41] Objective 2.4.1 and Policy 2.4.1.2 of the Strategic Directions section, provide the following matters to consider:

- The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include: trees that make a significant contribution to the visual landscape and history of neighbourhoods (Objective 2.4.1(b)).
- Policy 2.4.1.2 refers to the creation of the schedule on the basis of 'trees that make a significant contribution to the visual and historical landscape and amenity of neighbourhoods and other places' and the STEM criteria used to evaluate their inclusion, and use rules to restrict the removal or modification of these trees.

[42] Accordingly, assessment is made of the following effects of the proposal:

- Risks to personal/ public safety
- Risks to scheduled heritage building or scheduled heritage structure
- Risks to buildings
- Risks to infrastructure and network utilities
- Positive effects on the efficient use of land
- Effects on public benefit

Effects on safety, property, and infrastructure

- [43] As noted earlier, Mr Sycamore, concluded that there were significant risks to personal safety and the property associated with the tree in its current location. The three letters of support provided with the application also indicated some safety concerns and potential effects on property and infrastructure.
- [44] However, to undertake a thorough assessment and to substantiate the concerns related to the tree raised in the application it is considered appropriate that a technical assessment from a suitably qualified person such as an arborist would be required. As noted earlier, no technical assessments were provided by any suitably qualified person or arborist to assess whether the specific tree in its current location and condition fundamentally poses a risk to personal safety or properties including all the matters raised in the application. Mr Sycamore wished to rely on the Council's Arborist comments as detailed below.
- [45] The Council's Arborist (Urban Forest and Open Space Adviser), David Glenn, who has qualification as a 'Tree Risk Assessor' (TRaQ-QTRA-VALID) made the following comments and conclusions after considering the matters raised in the application and undertaking a site visit:
- a. *"I can confirm no concerns as to regard of health and safety with this tree and the surrounding people and property."*
 - b. *"There are no signs that the tree has any risk factors that would make it suspectable to whole or partial tree failure."*
 - c. *"I also believe there is no risk to the foundations of the house from the tree roots as in the main tree roots are responsible for shrinking clay soils by extracting moisture however Totara are not noted for removing moisture from the clay."*
 - d. *"The paving is definitely affected by the tree roots however the paving is uneven also in places where there are no tree roots affecting it lending creditability to the suggestion that the paving was poorly laid."*
 - e. *"There will be a nuisance value to the needles but I would suggest this is merely routine maintenance."*
 - f. *"The shading would be minimal in my opinion."*
- [46] It is acknowledged that there are nuisance factors associated with the tree, particularly regarding the tree needles/ leaves that have caused historical water damage resulting from the blocking of the spouting and the pump. However, Mr Glenn's considered that the risks to safety and property associated with these could be avoided and be adequately addressed through routine maintenance.
- [47] Furthermore, it is evident that the tree roots have uplifted the paving, however, as mentioned by Mr Glenn there are uneven areas of paving where there are no tree roots affecting it. Accordingly, this leaves uncertainty to whether the paving was correctly installed by suitably qualified persons and difficult to determine how the tree roots would have affected the paving if installed correctly. Nevertheless, it is acknowledged that there may be some trip risks associated with this, but the applicant has not explored options to mitigate this without the removal of the tree. Any existing risks associated with tripping over the uneven paving appears is not significant to the extent where removal of the tree is required.

- [48] I concur with the assessment and conclusions provided by Mr Glenn and based on this assessment and the lack of any further technical assessment provided with the application it is considered that the Scheduled Tree T285 in its current condition and location does not pose any significant risks to personal safety, public safety, property, or infrastructure. For the sake of clarity, this does not mean there are no perceived risks associated with the tree on personal safety or property as it is acknowledged that an individual's subjective view of the scale and location of the tree can generate concerns. However, based on the assessment provided by Mr Glenn and the absence of any technical assessment provided with the application, the scheduled Totara tree on the subject site does not appear to pose any significant health and safety risks on individuals and properties that would warrant the removal of the tree.

Effects on amenity

- [49] Policy 2.4.1.2 of the Proposed 2GP notes *"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..."* In accordance with this policy, the criteria when assessing whether a tree is identified as being significant is determined by the condition and amenity aspects of the STEM evaluation and considering any potential adverse effects on risks to safety and damage to existing infrastructure, buildings or structures. Accordingly, the primary reason for the inclusion of a tree in a schedule to restrict the removal or modification of such tree is related to having significant contribution it has visual and historic landscape, and to the amenity of the area.
- [50] As noted by Mr Glenn and the further information provided by Mr Sycamore, the significance of the totara tree on the subject site that was included in the schedule of the district plan was questioned and it was suggested that the overall STEM score was over-inflated. No arborist assessment was provided with the application to support the view regarding the over-inflated STEM score. However, Mr Glenn had reassessed the tree and provided an updated STEM score of 96 comprised of 69 points for 'condition' and 27 for 'amenity' which contrasts the 2001 STEM score of 156 points (87 for 'condition' and 69 for 'amenity').
- [51] Regarding the discrepancy between the scores Mr Glenn noted:

"There [is] a few reasons why the scores differ mostly these are to do with attributes that are subjective and require determinations based on Ron Flocks thoughts on trees and also the changes to the method he introduced when the RNZIH no longer supported the method they were using.

It requires delving into the questions that are asked and decided on before scoring. I have worked with this for more than 30 years and often a person doing the scoring is guided by the score sheet rather than the criteria as set in the guide.

I have put the original scores alongside my scores for comparison.

Totara is a well-known and common species in the South Island it meets no criteria for infrequent.

Its function (usefulness) is neither greater or less than most single trees however it does not provide a greater score for the physical or Conservation criteria and further there are negative factors.

From my experience in judging tree ages I would put this 80 plus this could be proven one way or the other by an old photograph however it's not a big nor old Totara. I have not looked for an old photo as yet.

Although the tree is a single tree it's not a solitary tree while standing at the tree you can count 10 plus.

I grade its role as a 3 as I cannot see any defence of 15 it is a small tree in a small garden surrounded by many trees.

I grade its climate effect as a 3 as an individual tree in most cases has a minimal effect on the climate, many studies have shown that 5k or more trees (a shelter belt) can have a climate influence and as such the Totara is part of the fabric of the tree landscape of the area however it's an individual tree."

- [52] It is acknowledged to a certain extent that in relation to assessing the amenity values of a tree it can often be a very subjective matter and dependant on the perception of an individual rather than an objective standard. Although the STEM assessment provides some degree of an objective assessment to the amenity aspect of the tree it does not provide a complete objective assessment in relation to the 'amenity' aspects of the tree. Despite the overall STEM score of 96 points provided by Mr Glenn, it is important to note that the Council has generally relied on both the Council's Arborist and Landscape Architect to provide the condition and amenity scores respectively for a STEM evaluation to provide a more balanced assessment.

- [53] Accordingly, the Council's Landscape Architect, Luke McKinlay, has also reviewed the application and had undertaken a site visit. Mr McKinlay had provided the following comments:

"It is considered that the 2001 STEM scores for stature, visibility and proximity are reasonable. The measurements for stature and visibility appear accurate. With regards to proximity, the assessment of this criterion is largely determined by the extent to which the surrounding context is considered. At the site level, this is a solitary tree. If considered in the context of the neighbouring properties, there is generally some separation to other nearby trees. The closest neighbouring trees are also smaller/visually subservient to T285. It is not part of an obvious cluster/block of trees (refer figs 1-3, Appendix 1).

With regards to role, this criterion assesses a trees' value in its setting or as part of a visual composition. The STEM assessment guide recommends considering this criterion, by asking the question "how would a particular vista/place look without the tree?". A positive role can relate to a harmonious relationship between the tree and its surrounds (i.e. it does not necessarily need to be the most visually dominant tree in the neighbourhood to have a valued role). Broadly, "role" relates to the visual and amenity contribution made by a tree in a particular location.

*In this setting, it is considered that the Totara tree, which is healthy and has good form, contributes positively to the neighbourhood character, which features trees in several different settings. In this well-established neighbourhood, several large native trees, included scheduled beech trees (*Nothofagus fusca*), occupy relatively prominent locations at 124, 102 and 84 Cannington Road. Oriental Plane and European Ash street trees line the northern side of Cannington Road. Trees also frame the boundaries of the nearby John McGlashan College sports fields. More broadly, the Ross Creek Reservoir Reserve contains Kanuka-broadleaved forest on the hill slopes north of the site.*

In terms of streetscape amenity, it is considered that this Totara forms a moderately prominent native tree, albeit setback from the street edge. It forms a notable part of the fabric of the "tree scape" within this neighbourhood, without being a primary focal feature. It integrates harmoniously with the surrounding neighbourhood. On balance, it is considered that it has a moderate role, as a long-standing tree in this neighbourhood.

According to the STEM methodology guide, the climate criterion specifically refers to the microclimatic influence of a tree in terms of shade, shelter, and temperature control. On this basis, it is considered that the 2001 STEM assessment has somewhat overestimated the climatic influence of T285. Because this tree is set back from the street edge, its climatic influence on nearby public spaces is limited. It is, however, an evergreen native species with a relatively broad canopy, so will have some, albeit moderate influence in terms of shade and shelter. It is considered that it will have no more than a moderate influence on climate.

Reassessment of the amenity component of the STEM.

- *Stature: 9-14 (9 points)*
- *Visibility: 0.5km (3 points)*
- *Proximity: Solitary (27 points)*
- *Role: moderate (9 points)*
- *Climate: moderate (9 points)*

Total amenity score: 57 points

- [54] Mr McKinlay concluded that "...the 2001 STEM amenity assessment of T285 is slightly overestimated, but this tree continues to make a positive contribution to the amenity of the surrounding area."
- [55] Accordingly, taking into consideration the 'condition' score of 69 provided by Mr Glenn, and the 'amenity' score of 57, it is considered that the tree would have an overall STEM score of 126 points. Given the general benchmark score for a tree to be included in the schedule is 147 points, the tree falls short by approximately 21 points from the 'benchmark' score and 30 points less than the original 2001 STEM evaluation. Based on this it is considered that notwithstanding the current listing on the District Plan as scheduled tree T285, there is no substantive evidence that the tree on the subject site does have attributes and characteristics where it provides significant contribution to the visual landscape or amenity of the surrounding area. Furthermore, it is noted that the tree is located on a rear site and does not have very prominent views from the general public areas. The removal of the tree may not be significantly noticeable and any contribution to amenity from the preservation of this tree will have little benefit because of the constrained location adjacent to dwellings. Hence, despite the tree being included in the schedule, based on the current STEM score the tree is not considered to be 'significant' as intended by the Proposed 2GP.
- [56] For these reasons, and taking into consideration matters raised by the applicant, the letters of support, and the submitter, it is considered that if this particular tree was removed, any adverse effects on the amenity values of the surrounding area would not be significant. Although the tree does provide some amenity values to the surrounding area, in my opinion the effects of removal on the amenity values will be less than minor.

Positive Effects

- [57] As noted earlier, the applicant's primary reason for seeking the removal of the tree is related to the perceived risks to personal safety and property. As no submission opposing the removal of the tree was received and given the applicant and the three adjoining neighbours (and also the submitter) have all raised personal concerns related to the tree and wish to have the tree removed it is considered that removal of the tree would have some positive effects on the personal well-being of those who live in close proximity to the tree, and would address the perceived risks associated with the tree. Whether or not there is any evidence of the risks, the perceived conflict is likely to be ongoing due to the proximity of the tree to dwellings, and refusing consent will only

frustrate the expectations of the applicant and their neighbour, for no tangible public benefit. Given the location of the tree within the subject site, the removal of the tree will not result in any significant positive effects on the public in general nor will it result in a more significantly positive effect on the efficient use of land.

Effects Assessment Conclusion

- [58] After considering the likely effects of this proposal above, overall, I consider the tree does not pose any significant risks to personal safety, public safety, properties or infrastructure. Any adverse amenity effects from the removal of the tree will be minor and the proposed removal of the tree would result in some positive effects to the applicant and the neighbours who have provided a letter or support.
- [59] A condition will be included to ensure that all works associated with the removal of the tree is undertaken by a suitably qualified and experienced professional, in a safe manner, so that neighbouring people and properties are not put at risk, and that all debris resulting from the felling of the tree must be removed.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [60] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
- [61] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

- [62] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Proposed 2GP were taken into account in assessing the application. As the zoning and relevant rule provisions of the ODP for this site have been superseded by the provisions of the Proposed 2GP, it is considered that there are no objectives and policies of the ODP that are relevant to the proposal that needs to be assessed as part of this assessment.

Proposed 2GP

- [63] The following objectives and policies of the Proposed 2GP were considered to be relevant to this application:

Scheduled Trees Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 7.2.1 <i>The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained</i>	As note earlier, the Council's Arborist, David Glenn concluded that the there are no known risks to personal/ public safety, heritage buildings or structures, buildings, or infrastructure in general due to the tree that would require the removal of the tree.

Policy 7.2.1.1 <i>Enable the removal of a schedule tree where they are certified as being dead or in terminal decline by a suitably qualified arborist or where subject to an order for removal in terms of section 333 of the Property Law Act 2007</i>	Neither is the tree causing any adverse effects on Council's infrastructure or network utilities and no concerns were raised in terms of needing to remove the tree in the future to mitigate any potential effects on the infrastructure or network utilities. It is considered any adverse effects on buildings, properties, or infrastructure could be mitigated through routine maintenance.
Policy 7.2.1.2 <i>Avoid the removal of a scheduled tree (except as provided for in Policy 7.2.1.1) unless:</i> <i>a. there is a significant risk to personal/public safety or a risk to personal safety that is required to be managed under health and safety legislation;</i> <i>b. the tree poses a substantial risk to a scheduled heritage building or structure;</i> <i>c. there is a moderate to significant risk to buildings;</i> <i>d. the removal of the tree is necessary to avoid significant adverse effects on existing infrastructure and network utilities; or</i> <i>e. removal of the tree will result in significant positive effects in respect of the efficient use of land.</i> <i>X. removal of the tree is required to allow for significant public benefit that could not otherwise be achieved, and the public benefit outweighs the adverse effects of loss of the tree.</i>	As summarised in the assessment of effects, the removal of the tree would result in some positive effects that would benefit the applicant and the neighbours. However, the removal of the tree will not result in any significant positive effects on the public in general nor will it result in a more significantly positive effect on the efficient use of land. Based on the assessment above, it is considered that the removal is not justifiable under Policy 7.2.1.2. However, as mentioned earlier, after taking into consideration the condition score of 69 provided by Mr Glenn, and the amenity score of 57 provided by Mr McKinlay it is considered that the tree would have an overall STEM score of 126 points. Given the general benchmark score for a tree to be included in the schedule is 147 points, it is considered that notwithstanding the current scheduling of tree T285 there is no substantive evidence that it does have attributes and characteristics where it provides significant contribution to the visual landscape or amenity of the surrounding area. It is noted that the tree is located on a rear site and does not have very prominent views from the general public areas and the removal of the tree may not be significantly noticeable. Hence, despite the tree being included in the schedule, based on the current STEM assessment the tree is not considered to be 'significant' in terms of Objective 7.2.1. The removal of this tree is not consistent with the objective and the related policies, but in the absence of any evidence of a loss of public amenity or other environmental value, the removal of Tree 285 does not undermine, and is not repugnant to the objective and policy. For these reasons, the proposed removal of the scheduled tree T285 is not considered to be contrary to this objective and policies.

Strategic Directions Section

Objective/Policy	Is the proposal Consistent, Inconsistent with or Contrary to the Objectives and Policies?
Objective 2.4.1: Form and structure of the environment:	As noted above, given the updated STEM score of 126 points, it is considered that the tree does not make significant contribution to the visual landscape and

<i>The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include:</i> ... <i>b. trees that make a significant contribution to the visual landscape and history of neighbourhoods.</i>	amenity of the neighbourhood. The removal of the tree is inconsistent with Objective 2.4.1 and Policy 2.4.1.2. The fact the tree is currently scheduled tree infers there must be elements of the environment that warrant protection. However, the current STEM assessment does not support this conclusion. Accordingly, it is considered that the removal of the proposed scheduled tree is not considered to be contrary to this objective and policy.
Policy 2.4.1.2 <i>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:</i> <i>a. health and condition of the tree, including:</i> <i>i. vigour and vitality;</i> <i>ii. and age; and</i> <i>b. contribution to the amenity of an area, including:</i> <i>i. occurrence of the species and historic and scientific values;</i> <i>ii. function (usefulness), for example biodiversity supporting or fruit bearing;</i> <i>iii. stature;</i> <i>iv. visibility;</i> <i>v. proximity of other trees;</i> <i>vi. role in the setting;</i> <i>vii. climatic influence; and</i> <i>c. any potential adverse effects, including:</i> <i>i. risk to safety; and</i> <i>ii. risk of potential damage to existing infrastructure, buildings or structures.</i>	

Overall Objectives and Policies Assessment

- [64] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is not contrary with those provisions.

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

- [65] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Partially Operative Otago Regional Policy Statement 2019 (RPS) was approved and made operative on 15 March 2021. It is considered that the provisions of the RPS does not have any direct relevance to the proposal.

DECISION MAKING FRAMEWORK**Part 2 Matters**

- [66] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104

- [67] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will be minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [68] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [69] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies relating to the Proposed 2GP.
- [70] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago.

Section 104D

- [71] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [72] Only one of the two tests outlined by Section 104D need be met for Council to be able to assess the application under Section 104 of the Act. For an activity to be contrary to the objectives and policies of the relevant plan, the proposal will need to be considered to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established.
- [73] It is noted that in this instance, the proposal is assessed as being not contrary to the key objectives and policies of the Proposed 2GP and the adverse effects of the proposal have been assessed as to be no more than minor. Accordingly, the proposal has passed at least both limbs of the 'gateway test'. Therefore, the Council can exercise its discretion under section 104D to grant consent.

Other Matters

- [74] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Having regard to this section, no other matters are considered relevant.
- [75] Case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set, and the integrity of the District Plan may be undermined.
- [76] Based on the information available, I believe there is supporting evidence to suggest that this proposal can be considered a 'true exception'. It is acknowledged that the Proposed 2GP is very prescriptive around when the removal of a scheduled tree is appropriate and provides a non-complying activity status for removal. The current application has been assessed as not meeting any of the criteria for when removal of a scheduled tree under Policy 7.2.4.2. However, as mentioned, Objective 7.2.1 references the contribution of 'significant trees' to the visual landscape and history of neighbourhoods is maintained. Accordingly, although the totara tree is scheduled under the Proposed 2GP, it is considered that with the current STEM score provided by the Council's Arborist and Landscape Architect, it falls short of the 'benchmark' score by 21 points that would qualify a tree for inclusion in the District Plan as being 'significant'. Hence, it is considered that the original 2001 STEM score is more likely to have been over-inflated, and there does not appear to be any clear evidence or exceptional reasons for it to justify its ongoing protection on the grounds of public benefit, by way of the schedule of the Proposed 2GP. The removal of the tree would not be contrary with the relevant objectives and policies of the Proposed 2GP for the reasons discussed earlier.
- [77] The proposed removal of the scheduled tree may pose some challenges to the integrity of the Proposed 2GP, particularly, the integrity of Appendix A1.3 Schedule of Trees as it raises questions of whether there are other trees included in the schedule that may not truly be considered 'significant'. Hence, granting of this consent may pose some risks to an undesirable precedent where it may result in increased number of applications to remove scheduled trees by challenging the significance of a scheduled tree listed in Appendix A1.3.
- [78] However, any application for the removal of a scheduled tree would be assessed on a case-by-case basis and the relevant Council officers (Arborist, and Landscape Architect) would provide their technical assessments regarding the tree which will include reviewing of the STEM evaluation. If the STEM score provided by the Council officers is meaningfully different and much lower than the original score that resulted in the tree being scheduled, then it would be justifiable to assess on a case-by-case basis whether the tree does or does not warrant the protection as required under the Proposed 2GP.
- [79] Overall, it is considered that the proposed removal of the scheduled tree in this instance will not result in any significant undesirable precedent nor significantly compromise the integrity of the Proposed 2GP.

CONCLUSION

- [80] Having regard to the above assessment, I recommend that the application be granted subject to appropriate conditions.

DECISION

Pursuant to Part 2 and sections 34A(1), 104, 104B, and 104D of the Resource Management Act 1991, and the provisions of the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council

*grants consent to a **non-complying activity** being to remove the scheduled tree - Podocarpus totara ('Totara') identified as T285 under Appendix A1.3 of the Proposed 2GP at 100 Cannington Road, Dunedin, legally described as Lot 2 Deposited Plan 24382 (held in Records of Title OT16B/816), subject to the conditions imposed under section 108 of the Act.*

REASONS FOR DECISION

- [81] Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity can be adequately mitigated and will be less than minor.
- [82] The proposal is not considered to be contrary with the key relevant objectives and policies of the Proposed 2GP.
- [83] Overall, the proposed removal of the scheduled tree in this instance will not result in any significant undesirable precedent nor significantly compromise the integrity of the Proposed 2GP.

RIGHTS OF APPEAL

- [84] 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.
- [85] The address of the Environment Court is:
- The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013
- [86] 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.
- [87] Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

COMMENCEMENT OF CONSENT

- [88] 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

- [89] 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 nature of your intended works/activity, this consent will require one inspection.

- [90] The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspection/s will be included in the invoice for your application.
- [91] It should be noted that if additional inspections are required, beyond those scheduled at the time the consent is issued, then there is the ability to apply additional charges to cover the costs of these extra inspections. Often you can reduce the need for additional inspections by complying with the conditions of consent in a timely manner and by ensuring on-going compliance with those conditions. Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Prepared by:



Caleb Park
Associate Senior Planner

20 June 2023

Approved by:



Alan Worthington
Resource Consents Manager

28 June 2023

Consent Type: Land Use Consent

Consent Number: LUC-2023-61

Purpose: To remove the scheduled tree - Podocarpus totara ('Totara') identified as T285 under Appendix A1.3 of the Proposed 2GP.

Location of Activity: 100 Cannington Road, Dunedin.

Legal Description: Lot 2 Deposited Plan 24382 (Record of Title OT16B/816).

Lapse Date: 28 June 2028, unless the consent has been given effect to before this date.

Conditions:

- The proposed activity must be undertaken in general accordance with the information provided with the resource consent application received by the Council on 17 March 2021, and further information received on, except where modified by the following condition.*
- All works associated with the removal of the tree must be undertaken by a suitably qualified and experienced professional/s, in a safe manner that ensures neighbouring people and properties are not put at risk or damaged. All debris resulting from the felling of the tree must be cleaned up and removed from the site.*

Advice Notes:

Noise

- All works associated with the removal of the tree must be undertaken in manner than complies with the relevant noise standards under the district plan unless authorised by a resource consent. Failure to comply with the relevant noise standards may result in enforcement action.

9.3.6 Noise

Land use activities, public amenity activities, network utility activities, temporary activities and the operation, repair and maintenance of the rail network must not exceed the following noise emission limits:

Zoning of receiving property		Noise level measured at the boundary of the receiving property or the notional boundary of noise sensitive activities in a rural, rural residential or Ashburn Clinic zone		
		a. 7.00am to 7.00pm	b. 7.00pm to 10.00pm	c. 10.00pm to 7.00am
1.	Residential, Recreation, Smith Street and York Place, schools, Dunedin Botanic Garden, Wakari Hospital, Mercy Hospital and Moana Pool zones	50 dBAeq (15 min)	45 dBAeq (15 min)	i. 40 dBAeq (15 min); and ii. 70 dBAeq LAFmax

General

2. 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.
3. 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.
4. 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.
5. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
6. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.

Issued at Dunedin on 28 June 2023

A handwritten signature in black ink, appearing to read 'Alan Worthington', written in a cursive style.

Alan Worthington

Resource Consent Manager

Appendix One: Scheduled Tree (T285) subject to removal under LUC-2023-61

