

5 March 2025

Rosemary Creighton
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Roslyn
Dunedin, 9010

Via email: rosie.creighton.nz@gmail.com

Kia ora Rosie,

RESOURCE CONSENT APPLICATION:

**LUC-2024-297
2 FIFIELD STREET
DUNEDIN**

The above application for the removal of a Scheduled Tree (T454) at 2 Fifield Street, Roslyn, 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 Megan Justice and Councillors Sophie Barker and Kevin Gilbert, heard and considered the application at a hearing on Wednesday 12 February 2025.

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 5 March 2025. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant, Rosemary Creighton, presented her own case.

Council staff attending were:

Jeremy Grey (Senior Planner/Advisor to Committee), Finn Campbell (Processing Planner), Luke McKinlay (Landscape Architect), Mark Roberts (Consultant Arborist), Joe Fitzsimmons (Team Leader Inspections, Buildings Services), and Lauren Riddle (Governance Support Officer).

The Chair noted an apology from Mark Mawdsley (Team Leader, Advisory Services) and advised the Panel would issue a formal minute at the end of the hearing if needed in relation to heritage matters.

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 ongoing risk the tree poses to a heritage building.
- The ongoing maintenance of the scheduled tree required to manage potential risks of the tree adversely affecting the heritage building, and the affect the tree maintenance may have on the tree's values.

Summary of Evidence

Introduction from Processing Planner

Mr Campbell outlined the application and presented a brief summary of his assessment of the proposal. He then responded to questions from the Committee regarding setting a precedent if the tree was removed, and the importance of being able to maintain a scheduled heritage building. He answered a further question about an underground fuel tank located in the dripline of the tree.

The Applicant's Case

Ms Creighton spoke to the application and then responded to questions from the Committee.

She advised that it was a difficult decision to apply to remove T454 and that her focus is pro-heritage. She spoke of her experiences owning four properties with scheduled heritage buildings. She further described the maintenance works that have been carried out on the scheduled heritage building (B099) on site. She spoke of how the tree prevents access to maintain a section of the house exterior which impacts on the works required to maintain the building. She described how the tree partially blocks views of the building from Fifield Street and Tweed Street, which impacted the publics' appreciation of the building.

In response to questioning from the Committee, Ms Creighton advised that the heritage building had last been painted in 2017 and that she had replaced rotten woodwork throughout the house near the scheduled tree. She advised the slate roof, the two chimneys and the balcony had all been replaced, as well as carefully considered internal renovations.

Submitter Presentation

Mr Moffatt expressed the view of POTS on the application. His view was that the tree was growing in the wrong location. Mr Moffatt stated that the inclusion of the tree in the schedule was inappropriate, and he did not consider the applicant should have to pay for the work to remove the tree as he considered it a council responsibility for a dangerous tree. He advised that the socially correct and just course of action is that the tree is removed, and that Council pays the total cost of its removal.

Council Officer's Evidence

In response to Committee questions, Mr Roberts advised that topping the Pōhutukawa would not kill the tree and pōhutukawa can live in a native environment for 500-600 years. He stated that if this tree was less confined spatially it would likely grow wider and taller. When questioned about the age of the tree, Mr Roberts stated that it is hard to age a tree, but he considered that it is younger than the house. He described that the STEM assessment process is an attempt to apply an objective process to the assessment of trees, but that trees can receive different scores as there remains some subjectivity in the process. In response to Committee questions about other options to manage the trees growth, Mr Roberts advised that root pruning would not be viable as the size of a tree's roots do not determine the size of the tree.

Mr McKinley responded to questions regarding the STEM score and stated that the time of the year should not matter when conducting a STEM assessment. He noted that the tree is in a prominent location and as a result there is some competition with the amenity value of the heritage building and the values of the tree.

Mr Fitzsimmons reiterated his assessment stating that the building is currently in very good condition, the foundations are good, and that the house is in outstanding condition given its age. He said that it would be incredibly difficult to build a scaffold for maintenance of the house with the location of the tree.

Processing Planner's Review of Recommendation

Mr Campbell reviewed his recommendation in light of the evidence presented at the hearing, maintaining his recommendation that consent be granted.

Applicants Right of Reply

In her right of reply, Ms Creighton commented on the draft conditions of consent put forward in the Planners Report and sought to have the ability to retain some of the wood from the tree on site, if the consent to remove the tree was granted.

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, and the relevant statutory and plan provisions, on 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 Partially Operative Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying activity** being the removal of Scheduled Tree T454 located at 2 Fifield Street, Dunedin, legally described as Lot 2 Deposited Plan 308 (Record of Title OT139/139).*

Reasons for this Decision

1. The Committee agrees that the proposal is a non-complying activity under the relevant provisions of the Partially Operative 2GP. The provisions of this plan relating to scheduled trees are beyond legal challenge and the equivalent provisions of the Dunedin City District Plan 2006 are no longer relevant to the consideration of this application.
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 agree with Mr Mawdsley about the importance of heritage building B099 and that retaining the tree would pose a substantial risk to a scheduled heritage building by restricting the ability to maintain this weatherboard building. Mr Mawdsley's evidence stated the shading caused by the tree on the building will, over time, compromise the drying cycle of the exterior timber wall, likely negatively affecting the timber construction over time. Mr Fitzsimmons agreed with Mr Mawdsley that timber weatherboard buildings require ongoing maintenance.
4. The Committee accepts the evidence of Mr Fitzsimmons that erecting scaffolding between the building and the tree is not possible.
5. Evidence was provided to the Committee from Council's Consultant Arborist Mr Roberts that the tree is in healthy condition and cannot be described as being dead or in decline. Mr Roberts evidence that the tree was fast growing, and that considerable additional growth could be expected, is accepted.
6. The Committee accepted the evidence of Mr Roberts that the tree would require ongoing management to ensure the protection of the scheduled heritage building, and that this ongoing management would compromise the tree visually/aesthetically, such that it will not warrant its scheduled status. The Committee noted the evidence of prior pruning of the tree to the trees' form, when undertaking its site visit.
7. The Committee accepts that the alternatives to removing the tree have been considered by all parties, and that no viable alternative has been identified that would allow the tree and the heritage building to co-exist in their current locations at the site.
8. The Committee accepts the evidence provided by Council's Landscape Architect that the removal of the tree would increase the visibility of the heritage building resulting in positive effects on streetscape amenity. These positive effects will balance the adverse effects of removing the tree, resulting in less than minor or negligible adverse effects on streetscape amenity values, overall.
9. The Committee agrees with Mr Campbell's assessment that overall, the effects of removing the tree on streetscape amenity will be negligible. No other adverse environmental effects resulting from the removal of the tree have been identified.
10. Turning to the consideration of the relevant objectives and policies of the Partially Operative 2GP, the Committee finds that the proposal is not inconsistent with Policy 7.2.1.2. Policy 7.2.1.2 is considered to be the most relevant policy to guide decision making on applications to remove scheduled trees, and provides a pathway to consider removals where the tree poses a substantial risk to a scheduled heritage building (Policy 7.2.1.2(b)). The Committee agrees with Mr Campbell that the proposal to remove the tree is consistent with this policy, based on the evidence heard from Mr Fitzsimmons and Mr Roberts that the proximity of the tree to the building will prevent

maintenance and that this represents a substantial risk to a heritage building of this nature that requires ongoing maintenance.

11. The Committee concludes that the proposal will likely result in adverse effects on amenity values at a local level that will be less than minor and, on this basis, the first 'gateway' test of the Section 104D of the RMA is met. While the Committee considers that the proposal is inconsistent with Objective 7.2.1, which requires the contribution made by significant trees to the visual landscape and history of neighbourhoods to be maintained, the Committee considers the proposal to be generally consistent with the other relevant objectives and policies of the Partially Operative 2GP. The Committee therefore considers the proposal satisfies the second 'gateway' test in that the proposal is either consistent or inconsistent (and not contrary) with all the relevant objectives and policies of the Partially Operative 2GP, when considered in the round. As such, the Committee are able to consider granting consent to the proposal.
12. The decision of this Committee to grant the application has been guided by the provisions of the Partially Operative 2GP, and in particular Policy 7.2.1.2, and expert advice. Granting this consent, where the specific provisions in the Partially Operative 2GP in place to guide decision making on Scheduled Tree removals are satisfied, would not lead to an undesirable precedent being set.

Right of Appeal

Pursuant to 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, consisting of a stylized 'M' followed by a large, sweeping loop.

Meg Justice
Chair
Hearings Committee

Consent Type: Land Use Consent

Consent Number: LUC-2024-297

Purpose: The removal of a scheduled tree (T454).

Location of Activity: 2 Fifield Street, Roslyn, Dunedin.

Legal Description: Lot 2 DP 308 (Record of Title OT139/139).

Lapse Date: 5 March 2030, 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 2 August 2024, 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. 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.*

Advice Notes:

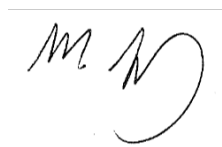
Tree removal works

- 1. The person exercising this consent shall take all reasonable measures to ensure the use of machinery for the removal of T454 complies with the relevant provisions of NZS 6803: 1999 Acoustics – Construction Noise.*

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.

Issued at Dunedin on 5 March 2025

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Meg Justice
Chair
Hearings Committee