

In The Matter: LUC 2015-578, 27 King Street, Mosgiel

Evidence By Craig Horne on behalf of CC Otago Ltd

Introduction

1. My name is Craig Horne. I hold a Bachelor of Surveying Degree from the University of Otago. I have been practicing throughout New Zealand as a surveyor and in aspects of planning and resource management since 1993.
2. I am the Director of Craig Horne Surveyors Ltd and practice as a surveying and resource management consultant predominantly in the Otago area.
3. This evidence has been prepared on behalf of the applicant. I am familiar with the Dunedin City District Plan, with the application site and the surrounding environment.
4. I have read and agree with the Code of Conduct for Expert Witnesses set out by the Environment Court. This evidence is prepared in accordance with the code of conduct.
5. I will also make further submissions at the hearing as the owner of CC Otago Ltd, the applicant.

Proposal

6. The applicant seeks the removal of a listed oak tree T666 from 27 King Street, Mosgiel on a 675m² section consented by SUB 2015-105. The tree having a canopy spread of 15 – 20m and a height of approximately 25m.
7. The application details the reasons for wanting the removal of the tree. These being;
 - the nuisance and shading the tree causes due to its significant size, resulting in the dwelling at 27 King Street being considered cold and dark outside of summer months,
 - The potential risks from falling branches and limbs,
 - the significant maintenance required due to the leaf and fruit fall,
8. The application is a discretionary activity which enables the consideration of the full range of the relevant issues. The committee is not limited to considering just the value of the tree itself, and the effects of removing the tree do not need to be minor before you can consider granting consent.

Assessment

9. I expect the outcome of the application will be essentially determined by the value the Committee places on the amenity values and health and safety of the residents of 27 King Street in comparison to the weight given to the amenity value of the tree to the wider community. The Planners report and the evidence of Council's Landscape Architect places greater weight on the amenity value of the tree to the wider community than the amenity values and health and safety of the residents of the property.
10. The applicants' evidence is that the negative impacts of the tree results in a significant reduction in amenity values for the residents of the property. In real terms this includes the lounge and bedrooms of the dwelling being significantly colder and darker for most of the year than would be the case if the tree was removed. Likewise the front yard/lawn are significantly encompassed by the tree which reduces sunlight and causes the area to be cold and dark outside summer months. The maintenance that is required due to the tree is significant and requires regular and considerable effort, including the cleaning of gutters.
11. There is the potential for branches and limbs falling from the tree, or even the entire tree falling in high winds. There is considerable cost associated with disposing of the leaf fall to the Council tip, having a tradesman clean the gutters and heating the house due to the reduced of sunlight.
12. The immediate past occupant of the dwelling indicated that the tree resulted in significant shading of the house and yard, was potentially hazardous and causing considerable expense in a number of ways.
13. Mr Darren Bain the current resident of the property (Planning Report page 63) indicated in his submission that the shading, reduction in light, interference with power lines and the potential hazards are all concerns of his.
14. The Butterworth case, which has been brought to this committees attention before, highlights Auckland City Councils *"seemingly unbending focus on the importance of retaining the tree"* and stated that *"the Council witnesses paid no more than lip service to the issues required to be considered under Part 2 of the Act, particularly the health and safety of the occupants of the house and neighbours, and their social and economic wellbeing."*
15. The Court stated in the Butterworth case that *"the tree is in our considered view, quite frankly, far too big for its setting. Its sheer size gives rise to many of the problems being experienced."* The site in the Butterworth case was slightly smaller at 500m² but the tree was a significantly smaller oak at 15m to 16m high and a spread of 11m to 14m. I consider in this case with the size of the tree and its location relative to the existing dwelling that the tree has simply outgrown its location.
16. The Court also stated *"the tree is unlikely to be critical to maintaining amenity values particularly appreciated by the community, given it is but one of many trees in what is a mature and quite green environment."* The same applies in this

case where Bruce and King Street have numerous street trees as shown in the Photos in the Planning Report (pages 21, 39 – 41). The street trees are not to the same size as T666 but a more appropriate scale for the location and provide significant amenity to the area.

17. The updated STEM assessment indicates the tree is visible from 1 km distant and attributes 9 points to the STEM score for this. By my measurement T666 is visible for no more than 300m along King Street in both directions, 200m southwest along Bruce Street and 100m northeast along Bruce Street. It is essentially invisible from other surrounding streets and the rest of Mosgiel on the flat. Viewing from the nearest elevated land at Joe Brown Drive (600m away) T666 blends with the numerous other trees and is not particularly distinctive.
18. Like the Butterworth case, I consider T666 is not a dominant feature on the environment unless you are in the very immediate environment (within approximately 100-200m), and therefore, contrary to Mrs Darby's and Mr Knox' evidence, it is unlikely to be of such significant value to the wider community. Mr Knox suggests the tree is significant to the immediate vicinity but extrapolates this to suggest the tree is distinctive for the area and benefit to the wider community.
19. The owners of properties in the vicinity of the site were notified of the proposal and the only responses supported the application. I note the submission of Susan and Graham Ellis (Page 37 Planning Report), who clearly have appreciated and valued the tree for 40 years but are prepared to acknowledge it has grown *"too large for the section."*
20. The District Plan also acknowledges that trees are not always appropriate in their location. The final paragraph on Page 15.1 states *"Management of trees as a natural resource is essential. It is important to protect significant trees, promote the retention of trees, and promote new plantings in recognition of their important role in enhancing the urban environment while providing for individual landowners who may need to modify or remove trees no longer suitable for the situation."*
21. Issue 15.1.3 states; *"Trees can have adverse effects on people living in close proximity to them. The reasonable expectations of adjacent residents to a satisfactory living environment must be recognized and protected."* The evidence from the applicants is that there is not a satisfactory living environment, both indoors and outdoors.
22. The explanation of this issue states *"Leaf drop, shading, blocking views, or possible impacts on health and safety matters which can cause people living in close proximity to trees to seek their removal or modification. Any perceived negative impacts should be balanced against the benefits of the trees retention, particularly to the wider environment, but also to the individual concerned. The adverse effects associated with trees can be ameliorated through thinning or crown reduction. In some instances the most viable option will be to remove the tree(s)."*

23. The lack of objection to the removal of the tree by the notified landowners and wider community suggests that the tree does not provide significant amenity nor is particularly valued by the community. I consider the detrimental effects on the residents of the property outweigh the perceived impacts of the trees removal by Council staff.
24. In granting consent to the removal of a tree at 9 Elliffe Place (RMA 20060458) the committee gave the following reasons;
- They recognized the size of the tree, and its position close to the house and overhanging the majority of the back yard is enough to significantly compromise the amenity values and use of the outdoor living space of the subject site.
 - The committee noted the STEM assessment is recognized as being a subjective assessment. They noted the tree had no score assigned for 'notable' reasons. The Committee could not justify the trees retention in this position while its presence had significant adverse effects on the amenity of the site.
 - The committee considered that the removal of the tree would enhance the amenity values of the neighbouring houses, including the future houses of the recently subdivided land to the south of the tree.
25. This decision by Council recognises the amenity of the individual properties can outweigh any perceived benefit of retaining the tree. This was also the crux of the Butterworth decision.
26. Mrs Darby states (Page 12 para 55) *"It is difficult to avoid, remedy or effectively mitigate the adverse effects of removing trees of such stature, visibility and significance."* Removing the tree will of course impact to some degree on wider amenity values however I consider this effect to be relatively minor in this case due to the visibility of the tree restricted to no more than a few hundred metres. The lack of concern voiced by the immediate neighbours of the property and the wider community also highlights the likely minor effect of the trees removal. Mrs Darby and Mr Knox' views that the removal of the tree will have significant impacts on the wider environment contradict the views of those who live in the immediate and wider environments.
27. Clearly the applicant considers the removal of the tree will improve the amenity, safety and well-being of those living at the property. Mrs Darby and Mr Knox both acknowledge this but do not consider this loss significant in comparison to the effects on the wider amenity.
28. Mrs Darby accurately states the issue as being (Page 12 para 57b) *"The Committee may wish to consider whether the amenity values of the wider community, or of the owners of the subject site and the neighbouring properties take precedence when determining this matter."* If on balance the effects are considered neutral I consider the first concern of the Committee should be to the residents of 27 King Street as the effects are concentrated on them, however in this case I consider the effects on the residents do tip the scale.

29. Mrs Darby considers the removal of the tree to be inconsistent with the policies and objectives of the Dunedin City District Plan (Page 12 para 62). This conclusion is based on Mrs Darby's view that the trees removal is inconsistent with the Sustainability, Residential and Trees sections of the District Plan as detailed on pages 9 and 10 of her report.
30. In respect of the Sustainability section Mrs Darby acknowledges the removal of the tree is likely to enhance the amenity of the immediate landowners but considers the loss of the healthy mature tree to the wider amenity on balance is inconsistent with the objectives and policies. I have detailed above the lesser prominence of the tree in comparison with the STEM evaluation. In light of this I consider the balance is tipped in favour of the removal of the tree as the impact of the tree on the residents of the property is more significant and directly measureable in comparison to the perceived impact on the wider community by Mrs Darby and Mr Knox.
31. In respect of the Residential section Mrs Darby also considers the removal of the tree to be inconsistent with the objectives and policies. I must disagree entirely with this conclusion as the primary purpose of the Residential zone is to provide quality living spaces for the city's residents. Paragraph 2 of the Introduction to the Residential section states "Amenity must be maintained to enable residents to provide for their social, economic and cultural wellbeing and for their health and safety. The types of activities which take place in these areas are those directly related to the accommodation of people, and their health, welfare and education."
32. Mrs Darby highlights Objective 8.2.1 and Policy 8.3.1 in the Residential section and suggests that the adverse effects on the wider community of the tree removal are greater than the benefits of retaining the tree. The explanation of this objective states; *"Amenity values in residential areas arise from access to sunlight, density, adequate parking, privacy, peace and quiet, landscaping and space between buildings. These values contribute to residential areas as pleasant places to live. It is essential that these values be maintained and in some instances enhanced to sustain the efficient use of the housing resource and contribute to the health, safety and wellbeing of the residents"*
33. The first attribute mentioned in the explanation is access to sunlight and it states it is essential that these values be maintained. The explanation of the Policy notes the amenity values of *"d) The penetration of sunlight to a site or building"*. It also states *"The loss or lack of any of these qualities and characteristics lowers the total amenity value ..."* I see significantly more relevance of this objective and policy to the applicants desire for more sunlight than the effect of the trees removal on the amenity of the wider community.
34. The Residential objectives and policies don't make any reference to the amenity benefits of trees to the wider community. While there is reference to landscaping this would normally be expected to refer to a scale of planting appropriate in the residential zone. I therefore consider the effects of removing the tree to be entirely consistent with the Residential section.
35. In respect of the Trees section I consider the application to be somewhere in the range of inconsistent to neutral. Objective 15.2.1 and Policies 15.3.1 and 15.3.2

encourage the protection of trees because of their benefit to amenity and the environment. However Issue 15.1.3 acknowledges *"Trees can have adverse effects on people living in close proximity to them."* While there is no objective or policy relating to this issue the Principal Reasons for Adopting policies also acknowledges the adverse effects of trees; *"The policies contained within this section seek to protect significant trees and inform the community about the benefits that trees can offer generally, while at the same time recognizing that there may be the need to avoid, remedy or mitigate and adverse effects associated with trees, for example nuisance from shading or falling leaves, the obstruction of views, or risk to the health and safety of people and the safety of buildings."*

36. Mrs Darby and Mr Knox appear to have viewed the fact that the site is the subject of subdivision consent as a factor in their recommendation not to grant consent to the trees removal. Mrs Darby states *"The proposed subdivision indicates that there will be two new property owners living in close proximity to the tree, both of whom will be aware of the tree at the time of purchase. Therefore, there is, or will be, a degree of choice to do so by the property owners."*
37. Firstly application was made for the subdivision at the same time (a few days apart) as the application for the removal of the tree. The subdivision was designed as a pragmatic response to the location of the tree within the property and in compliance with the density requirements of the District Plan. As Lot 1 of the subdivision can be developed with or without the tree then obtaining subdivision consent at that time was entirely reasonable and appropriate. I do however consider that there will be ongoing negative impacts of the tree on Lot 1 of the subdivision that should be assessed as part of this application. The tree will continue to grow and its negative impact likely to have a greater effect on Lot 1 as time passes.
38. Secondly, Mrs Darby infers that someone has to have lived at the property for a certain amount of time before the negative impacts of the tree can be taken into account. The negative impacts of shading and the loss of sunlight exist regardless of who occupies the dwelling. People live at properties for varied reasons and move to and fro for many other reasons. For example one reason could be that it is difficult to keep tenants in a property due to the negative impacts of the tree.
39. Mr Knox suggests *"One catalyst for this application appears to be a follow up to the subdivision..."* While there are negative impacts on Lot 1 of the subdivision, the primary reason for the application is because of the negative impacts on the existing dwelling and Lot 2. These are well documented in the application and above.
40. There will be ongoing impacts from the tree even if it were to be pruned and retained. These impacts will be on both the existing dwelling and Lot 1. Regardless of any pruning that occurs the tree is large and will continue to overshadow the existing dwelling and yard and shade the property. There will continue to be leaf and fruit fall with the effects felt on both properties resulting from the subdivision.

41. The tree will continue to grow and will require regular maintenance to keep it away from the power lines in the street and from the dwelling. Mr Battrick states on Page 26 *"They respond well to pruning but if pruned will require some management to retain the desired result."* This maintenance/management will be ongoing and at significant cost to the owners of the property on top of the other expenses that are incurred due to the tree.
42. The "Cut or Trim" notice received from Delta requires the tree be trimmed to 1.5m clear of the power lines. Mr Battrick (Page 25) states *"I believe the lines are low voltage only so require less clearance than high voltage hence, impact on the crown shape will be minimal."* Mr Battrick may not have been aware of the Delta requirement of 1.5m clearance at the time of writing his report. I suggest that the 1.5m clearance will have a greater effect on the crown shape than stated by Mr Battrick.
43. Mrs Darby has assessed the proposal against the Second Generation District Plan (2GP). The various sections that are relevant to this proposal from the 2GP have not taken affect and carry very little or no weight, and therefore should not be given any serious consideration in respect of this proposal.

Conclusion

44. In conclusion I consider the Committee can grant consent for the following reasons;
- The proposal to remove T666 is not contrary to the District Plans purpose and is on balance consistent with its objectives and policies. The District Plan gives specific ability for significant trees to be removed where they cause a nuisance as in this case.
 - The benefit of the tree to the wider community is not supported by the submissions made to the public notification of this application. The trees visibility to the wider community is limited and therefore so are its benefits.
 - There will be significant benefit to the residents of the property by ensuring they receive adequate sunlight in their house and yard, the ongoing maintenance burden will be removed, the risk of having a large tree in the yard will be removed and the ongoing costs will be reduced to a one-off cost of removal.

