

Summary of evidence

1. Reasonable estimate of Resource consent application

- a) 11.02.21 Email to William McCormack cc. Ian Hyde requesting an estimated cost of the resource consent application and application process including minimum charge, cost associated by relevant notification process and subsequent related charges.
- b) 21.02.21 Email reply from William McCormack cc Ian Hyde including an email from Laura Connor – Planner for the Ashburton District Council re the full application fee would be \$6,627.00 and it would be hard to give an estimate.
- c) 21.02.21 My reply to William McCormack expressing my frustration in not being able to determine an accurate estimate of the resource consent process.
- d) 22.02.21 Ian Hyde's reply via email cc William McCormack confirming that a request for an independent commissioner would be made at the time of lodgement of the application adding that it is common for the Ashburton District Council to use Commissioners for Resource management decisions. He reiterated it is difficult to estimate costs and provided an indicative cost for a commissioner. In relation to additional costs he indicates the lodgement fee for a notified consent being approximately the average cost and used an example of costs as a report on the condition of the tree (which the ADC already had from the criminal case) and if there were a number of submissions and parties who wish to be heard. Also indicating in some cases the applicant received a refund.
- e) 25.06.21 Email to Mr Ian Hyde cc Hirani Sikander reaffirming I would like an independant commissioner and requesting the relevant paperwork to complete this request and for the ADC to provide a formal estimate of costs for this process.
- f) 25.06.21 Reply from Mr Ian Hyde cc Hirani Sikandar advising that the Ashburton District Council had already engaged a Commissioner but acknowledge my request. Advising that the notified application fees reflect the average cost of a notified consent. To give an estimate

they would need to make a request to the reporting officer and commissioner and from his experience they would be reluctant to provide this until the process was well underway.

2. Appointing a commissioner

- a) Section 100A of the Resource Management Act 1991 if requested by the Applicant or submitter in relation to an application for resource consent if the application is notified and a hearing is to be held the local authority must delegate, under section 34A(1) its functions, powers and duties required to hear and decide the application to a hearings commissioner who are not members of the local authority.
- b) Section 34A (2) states that a local authority may delegate to any other person any functions, powers, or duties under this act **except** the following (b) the decision on an application for a resource consent.

3. Bill dispute process

- a) 26.11.22 Email from Hirani Sikander cc. Ian Hyde titled Post hearing charges for LUC21/0050 and Post hearing charges breakdown attached. Including **Appendix 1 & 2**
[Appendix 1 Page 12](#)
[Appendix 2 Page 13-18](#)
- b) 30.11.21 Email to Hirani Sikander cc. Ian Hyde registering my objection to the invoice on the basis it 130% more than the approximate cost and implied estimate.
- c) 30.11.21 Reply from Hirani Sikander cc. Ian Hyde explaining the 'post hearing charge invoices breakdown' also attaching a copy of the application agreement in relation to processing fees, which an applicant must sign or an application won't proceed.
- d) 02.02.22 Email to Rhonda Gallagher cc. Ian Hyde and a reply from Ian Soper cc. Ian Hyde and Rhonda Gallagher which provides context in relation to my reaction to the Post hearing charges and subsequent interaction with the Council post the resource consent hearing decision.
- e) 16.02.22 Email to Ian Soper explaining my objection to the invoice received and how this was completely unexpected. Which is why I had chosen to not engage with the Council in any matters that may affect me financially.
- f) 25.02.22 Email from Ian Hyde cc. Ian Soper dismissing my second objection to the post hearing charges and refusing to address my points.

- g) 01.04.22 Email to Erin Register Finance Manager for the Ashburton District Council after receiving a final demand for payment, with the threat of being referred to a Debt Collector. Erin acknowledged receipt and deferred to the CEO Hamish Riach who I attempted to meet with to discuss.
- h) 05.04.22 Email from Ian Hyde acknowledging my correspondence and that this is now being treated as a formal objection under the RMA and has been referred to an independent commissioner for their decision and Commissioner Mountfort will be in touch with the next steps in this process.

4. **Commissioner process**

- a) 02.05.22 Email from Ian Hyde cc. Mary Wilson CEO Secretary advising that the Commissioner would not be looking in to the matter until the middle of May.
- b) 09.06.22 Email from Cara Badger attaching the decision by the Commissioner Mountfort attached as **Appendix 3** with sections of concern highlighted considered by me as prejudiced and unprofessional. [Appendix 3 - Page 19-22](#)
- c) **Appendix 4** – Mary Clays report with sections of concern highlighted considered by me to be unprofessional. [Appendix 4 - Page 23-44](#)

Evidence-in-chief Details

Evidence 1. a)

FW: Unauthorised Activity - 30 Queens Drive

William McCormick <William.McCormick@adc.govt.nz>

To: Tracy Fleet

Cc: Ian Hyde

 You replied to this message on 21/02/2021 9:07 PM.

 Reply  Reply All  Forward 

Thu 18/02/2021 10:17 AM

Thank you for acknowledging my reply and summary of visits to my Tree. I understand that my indication to seek retrospective consent does not preclude the Council from taking further action if it feels necessary, I am merely asking for the opportunity to make the application and this may help you in your decision-making process if further action is fair or warranted under the circumstances.

I wish to provide a further response and seek clarification on the following matters.

1. I can confirm I will not be in the Ashburton District anytime in the next few weeks and therefore am unavailable to attend an interview in person.
2. I have received the Resource Consent application form thank you, however I have been having some difficulty determining the correct fees and charges associated with this application based on the different options in relation to the notification process and therefore need the following clarification.
 - a. Can you please confirm as per the Application form that the correct type of resource consent required is Land Use.
 - b. Please advise which specific minimum charges relate to this type of application.
 - c. Provide an estimated cost of the relevant Resource consent application process including minimum charge, cost associated by relevant notification process and any subsequent related charges.
3. Can you please provide a detailed list of the remediation work undertaken on my Silver Lime Tree to date by the Council as per your schedule of visits below.

Preparation of the Application and Environment impact report may take 3-4 weeks to complete based on the quality of information required for this application.

Kind regards

Miss Tracy Fleet

Evidence 1. b)

FW: Unauthorised Activity - 30 Queens Drive

William McCormick <William.McCormick@adc.govt.nz>

To: Tracy Fleet

Cc: Ian Hyde

 You replied to this message on 21/02/2021 9:07 PM.

 Reply  Reply All  Forward 

Thu 18/02/2021 10:17 AM

Dear Tracy,

Please see the information provided by the Planning Team, about the resource consent process and fees which may apply.

For the remedial work the tree has been filled with sphagnum moss in the cuts, wrapped in plastic to protect, signage for protection, watering and monitoring the condition.

Staff will be reducing the numbers of visits going forward.

The majority of the cost for remediation will be associated with staff time which is yet to be costed.

Regards,

William.

From: Laura Connor <Laura.Connor@adc.govt.nz>

Sent: Friday, 12 February 2021 08:49

To: William McCormick <William.McCormick@adc.govt.nz>

Subject: FW: Unauthorised Activity - 30 Queens Drive

Hi William,

A resource consent application for removal of any protected tree is a non-complying land use activity as per 12.7.5f in the [District Plan](#).

12.7.5 Non-Complying Activities The following activities shall be Non-Complying Activities:

f) The destruction or removal of any tree listed in Appendix 12-4 as Protected Trees (other than a dead, hazardous, or dangerous tree).

As per the fees and charges the application fee for a non-notified (non-complying status) land use application is \$1,332.00. I would note that if notification of the application is required then the limited notified application fee is \$4,538.00 or full notification application fee would be \$6,627.00. These are deposits and depending on how the notification process goes further fees may be required for processing so it is hard to give an estimate beyond that.

Kind regards,

Laura

Laura Connor | Planner

Evidence 1. c)

Re: Unauthorised Activity - 30 Queens Drive

Tracy Fleet <nixchick@hotmail.co.nz>
To: William McCormick
Cc: Ian Hyde

Reply Reply All Forward ...

Sun 21/02/2021 9:07 PM

Hi William,

Thank you for the information below.

In relation to the information from the planning team, once again the information provided is extremely frustrating from a ratepayers perspective because once again it does not provide accurate information in respect to my question in relation to the costs associated with this specific application.

As per the fees and charges the application fee for a non-notified (non-complying status) land use application is \$1,332.00. I would note that if notification of the application is required then the limited notified application fee is \$4,538.00 or full notification application fee would be \$6,627.00. These are deposits and depending on how the notification process goes further fees may be required for processing so it is hard to give an estimate beyond that.

How as an ordinary ratepayer am I to determine if the application I am making is a non-notified, limited notified or full notification application. From all the literature that I have read, this is determined by the relevant council, so here I am for the 3rd time asking for the specific cost relating to this particular application of which yourself and My Hyde will be very familiar with.

There must be some relevant information within the council that will determine what the initial application fee will be, what the usual process is and how long and how from a ballpark figure this will cost.

I would also like to be given information regarding the process and cost if I was to request an independent commissioner to decide on the Resource Consent application. I have recently become aware that this is an option and it may be in everyone's best interests if this is considered.

Regards

Tracy Fleet

Evidence 1. d)

RE: Unauthorised Activity - 30 Queens Drive

Ian Hyde <ian.hyde@adc.govt.nz>
To: Tracy Fleet
Cc: William McCormick

You replied to this message on 16/05/2021 5:50 PM.

Good morning Tracy

I am responding to this as your question is primarily related to consent matters which is separate to Williams role.

Resource Consent applications are usually charged the initial base deposit fee (currently \$1332.00) because during the course of the application two decisions are made, the first is whether any notification either limited or full notification is required. This decision is made during the process by staff or a commissioner after they have looked thoroughly at the circumstances of the case. The second stage is the final decision as to whether to approve the consent or not.

We don't usually require the notification fee at lodgement because it runs the risk of prejudgement (or perception of prejudgement) of the application because we haven't seen what is proposed and any mitigating information put forward. If we did insist on the fee at lodgement, it would give the strong appearance that we were going to notify the application no matter what the application said. It is for the applicants benefit that we take this approach.

If, when the application is assessed, it is decided that notification was required then the applicant is advised of the decision and told that if they want to continue they need to pay the additional deposit to continue the process.

Applications involving protected trees are generally subject to some form of notification so it would be logical to be prepared for the additional fee request, whether it was required or not but again I would stress that this is not a prejudgement of any application that you might like to make. The exception to the above is that the applicant can request full notification of an application. This removes the first decision in the process and can also sometimes reduce total costs as the Council does not have to conduct a notification assessment. In that case the applicant pays the full notification charge at lodgement and the application proceeds straight to notification.

You have also asked about the use of an independent commissioner. You would request this at the time of lodgement of the application and there is no specific process for it. It is reasonably common for Ashburton District Council to use Commissioners to make Resource Management Decisions.

As has been said before it is difficult to estimate costs, however to help you, I have given an indicative scenario on the costs by a Commissioner. There are a number of variables in this, so you should not rely on it to be specific to your situation. In this example a decision maker might spend 5 hours reviewing information associated with an application and another 2 hours on a site visit. A half day hearing would be 4 hours and the decision maker could spend around 12 hours on a decision. At a rate of \$250 per hour, this would be a cost of \$5750 plus disbursements.

In relation to additional costs, we have tried to make the lodgement fee for a notified application approximate the average total cost of a notified consent, however there are a number of variables which come into play, for example if the Council needed to commission a report about the condition of the tree or there were a number of submissions from parties who wished to be heard and which made the hearing longer than expected. Alternatively, there have been other applications where the applicant received a refund at the end of the process as not all of their deposit had been accounted for during it.

I am sorry that we can't give you a fixed cost for the application process, however hopefully, from the explanation above you will see that there are a number of complexities which are involved in the application process.

Please let me know if there is anything that remains unclear in relation to the process of applying for a resource consent.

Kind regards

Ian Hyde
Ian Hyde | District Planning Manager
DDI 03 307 7760 M 0272562035

Evidence 1. e)

From: Tracy Fleet <nixchick@hotmail.co.nz>
Sent: Friday, 25 June 2021 15:40
To: Ian Hyde <ian.hyde@adc.govt.nz>
Cc: Sikandar Hirani <Sikandar.Hirani@adc.govt.nz>
Subject: Re: Resource Consent - 30 Queens Drive

Hi Ian,

Thanks for the reply and this has certainly clarified matters for me.

Yes I can confirm I intend to proceed with the Resource Consent application and in light of your response, I want to formally request that the application is heard by an independent commissioner.

Can you please advise what if any paperwork I need to complete to confirm this and for the ADC to provide a formal estimate of costs for this process.

Kind regards

Tracy Fleet

Evidence 1. F)

From: Ian Hyde <Ian.Hyde@adc.govt.nz>
Sent: Friday, 25 June 2021 4:04 PM
To: Tracy Fleet <nixchick@hotmail.co.nz>
Cc: Sikandar Hirani <Sikandar.Hirani@adc.govt.nz>
Subject: RE: Resource Consent - 30 Queens Drive

Thank you Tracy

We had already engaged a Commissioner for the application so there is no further action required by you on that front, however I acknowledge your request in any event.

In regards to your request for an estimate, we try to make our notified application fees (which I believe you have already paid) reflect the average cost of a notified consent process. However as I have said previously the final total is somewhat dependent upon the complexity of the application and the level of response received to notification. We would need to ask the reporting officer and commissioner for an estimate and my experience is that they will be reluctant to do so until after the close of submissions when they can more accurately predict how much time they will need to complete their respective parts of the process.

Sikandar, can you please note Tracy's request, place her email on the file and prepare the application for notification at the earliest opportunity.

Kind regards

Ian

Evidence 2 a)

100A Hearing by commissioner if requested by applicant or submitter

- (1) This section applies in relation to an application for a resource consent if—
 - (a) the application is notified; and
 - (b) in accordance with section 100, a hearing of the application is to be held.
- (2) The applicant, or a person who makes a submission on the application, may request in writing that a local authority delegate its functions, powers, and duties required to hear and decide the application in accordance with subsection (4).
- (3) The request must be made no later than 5 working days after the closing date for submissions on the application.
- (4) If the local authority receives a request under subsection (2), it must delegate, under section 34A(1), its functions, powers, and duties required to hear and decide the application to 1 or more hearings commissioners who are not members of the local authority.

Section 100A: inserted, on 1 October 2009, by section 78 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Evidence 2. b)

34A Delegation of powers and functions to employees and other persons

- (1) A local authority may delegate to an employee, or hearings commissioner appointed by the local authority (who may or may not be a member of the local authority), any functions, powers, or duties under this Act except the following:
 - (a) the approval of a proposed policy statement or plan under clause 17 of Schedule 1;
 - (b) this power of delegation.
- (1A) If a local authority is considering appointing 1 or more hearings commissioners to exercise a delegated power to conduct a hearing under Part 1 or 5 of Schedule 1,—
 - (a) the local authority must consult tangata whenua through relevant iwi authorities on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū; and
 - (b) if the local authority considers it appropriate, it must appoint at least 1 commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū, in consultation with relevant iwi authorities.
- (2) A local authority may delegate to any other person any functions, powers, or duties under this Act except the following:
 - (a) the powers in subsection (1)(a) and (b);
 - (b) the decision on an application for a resource consent;
 - (c) the making of a recommendation on a requirement for a designation.
- (3) *[Repealed]*
- (4) Section 34(7), (8), (9), and (10) applies to a delegation under this section.
- (5) Subsection (1) or subsection (2) does not prevent a local authority delegating to any person the power to do anything before a final decision on a matter referred to in those subsections.

Section 34A: inserted, on 1 August 2003, by section 14 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 34A(1)(a): replaced, on 1 October 2009, by section 28 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 34A(1A): inserted, on 19 April 2017, by section 17 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 34A(3): repealed, on 10 August 2005, by section 14 of the Resource Management Amendment Act 2005 (2005 No 87).

Evidence 3. a) plus Appendix Evidence 3 Appendix 1 & 2

Appendix 1 Page 12
Appendix 2 Page 13-18

LUC21/0050 - Post hearing charges Lime Tree application - 30 Queens Drive

Hirani Sikandar <Hirani.Sikandar@adc.govt.nz>

To 30treehouse@gmail.com

Cc Ian Hyde

 This message has been replied to or forwarded.
This message was sent with High importance.



Hi Tracy,

Please find attached an invoice and breakdown for post hearing charges to process the resource consent application.

Note - We have paid the attached invoices on your behalf and request you to pay ADC using INV-44991; reference LUC21/0050.

Let me know if you need any further information/clarification.

Thank you and kind regards,

Hirani Sikandar | Planning Administration Officer

DDI 03 307 7757 | M

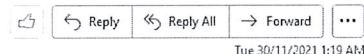
Evidence 3. b)

Re: LUC21/0050 - Post hearing charges Lime Tree application - 30 Queens Drive

Tracy Fleet <30treehouse@gmail.com>

To Hirani Sikandar

Cc Ian Hyde



Tue 30/11/2021 1:19 AM

Hi Hirani,

In addition to the invoice that appears to relate to another hearing, I also wish to advise that I object to paying for the Ashburton District Councils bills for their Arborist and for Mary Clay's report and time.

These costs are not within the ballpark of the costs stipulated in your fees for a fully notified resource consent application.

It is unfeasible to stipulate an approximate cost and then charge 130% more than the estimate.

Regards

Tracy

Evidence 3. c)

RE: LUC21/0050 - Post hearing charges Lime Tree application - 30 Queens Drive

Hirani Sikandar <Hirani.Sikandar@adc.govt.nz>
To: 30treehouse@gmail.com
Cc: Ian Hyde

👍 Reply ↶ Reply All → Forward ...
Tue 30/11/2021 9:30 AM

29-11-21 Post hearing charges LUC21-0050.pdf 112 KB
Signed App form by T A Fleet.jpg 124 KB
Post hearing charge breakdown 29-11-21.pdf 2 MB

Good morning Tracy,

We acknowledge there was an error in the invoice which incorrectly captured \$790.63 (INV-00946) for your post hearing charges and we apologise for the inconvenience this may have caused. This error was highlighted to me by Ian on 29th November 2021 and as I was in the process of correcting and re-issuing a new invoice you have spotted the error this morning.

Now, please allow me to explain in detail here.

The attached file labelled as 'post hearing charge breakdown 29-11-21' highlights the source of those additional charges generated when the application progressed through different stages which resulted in an increase of relevant people's time spent working on your application.

1. Commissioner's time for hearing attendance, review of reports and evidence, drafting decision, issuing minutes (\$7,615.65)
2. Arborist time – Attending hearing and review of reports (\$1,043.63)
3. Consultant Planner's time for resource consent application processing from start to end (\$6,882.75)

TOTAL - \$15,542.03

Since you already paid an application fee (\$1,332) and fully notified fees (\$5,118) to council in past, we have deducted those payments (\$1,332+\$5,118 = \$6,450) from the total charges (\$15,542.03) bringing the balance to **\$9,092.03** (\$15,442.03 - \$6,450). This is a standard practice of council whereby any excess charges are recovered from the applicant.

NOTE – I have attached a copy of your signed application agreement dated 16/05/21 highlighting the terms you agreed with the council.

Please let me know if you still have any doubts or require clarification.

Kind regards,

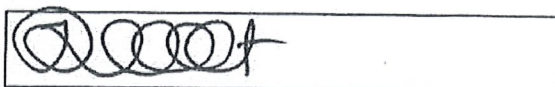
Declaration

I/we certify that, to the best of my knowledge and belief, the information given in this application is true and correct.

I/we accept that I/we have a legal obligation to comply with any conditions imposed on the Resource Consent should this application be approved.

I/we understand that the Council may charge me/us for all costs actually and reasonably incurred in processing this application. Subject to my/our rights under section 357B and 358 of the RMA to object to any costs, I/we agree to pay all the fees and charges levied by the Ashburton District Council for processing this application, including a further account if the cost of processing the application exceeds the deposit paid. Without limiting the Council's legal rights, if any steps, including the use of debt collectors, are necessary to recover unpaid processing costs, I/we agree to pay all costs of recovering those processing costs. If this application is made on behalf of a trust (private or family), a society (incorporated or unincorporated), or a company, in signing this application I/we are binding the trust, society or company to pay all the above costs and guaranteeing to pay all the above costs in my/our personal capacity.

Signature:



Date:

16/05/21

Please print your name:

Miss Tracy Ann Fleet

Evidence 3. d)

FW: Pruning Queens Drive Lime Tree

Ian Soper <Ian.Soper@adc.govt.nz>

To: Tracy Fleet

Cc: Rhonda Gallagher; Ian Hyde

 You replied to this message on 16/02/2022 1:56 PM.

 Reply  Reply All  Forward 

Wed 2/02/2022 8:47 AM

Hi Tracy

Thanks for your response.

We would note that the work proposed was based on the advice of independent arborists and was offered at no cost to you. We wanted to reiterate this in case there was some misunderstanding that might change your position.

Because the work was intended to address the damage caused in late 2020 and to assist with maintaining the viability of the tree as recommended by the arborist, our main priority is to see that this is completed. We would be grateful if you could confirm whether you intend to do the work yourself.

If you do not intend to do the work and maintain your position stated below, the Council will need to consider its options for having the work completed and ensuring the tree's survival and safety.

Kind regards
Ian

From: Tracy Fleet <nixchick@hotmail.co.nz>
Sent: Monday, 31 January 2022 18:37
To: Rhonda Gallagher <Rhonda.Gallagher@adc.govt.nz>
Cc: Ian Hyde <Ian.Hyde@adc.govt.nz>
Subject: Re: Pruning Queens Drive Lime Tree

Hi Rhonda,

I am really sorry to say that dealing with you and Council regarding my Lime tree has had a serious effect on my wellbeing.

Unfortunately our interaction prior to Christmas was the straw that broke the camel's back and it is not healthy for me emotionally or financially to engage with you at this time.

So at this time and probably for the foreseeable future I'm afraid the answer is No to access my property or do any work to my Lime tree.

Kind regards

Tracy

Evidence 3. e)

RE: Pruning Queens Drive Lime Tree

Tracy Fleet

To: Ian Soper

 Reply  Reply All  Forward 

Wed 16/02/2022 1:56 PM

Hi Ian,

I have just come across your email in my junk folder, it's a shame that Rhonda didn't make the effort to reply to my emails advising me that I should have received a response from you. This is one of the examples of the disappointing and frustrating aspects of communicating in particular with Rhonda.

In terms of costs, I understand that this will be at 'no cost' to me at this point in time, however I am under no illusions that should the ADC be successful in their court case against me, that they will factor this cost into any fine/reparation costs claimed. I am also a bit confused about your comment about performing this work myself considering the current court case.

The ADC during the resource consent hearing process, made it very clear that they hold no liability for the Lime tree if it should fall because the tree is on private land and therefore the land owners responsibility. Ian Hyde did also imply that their agreement to meet any costs of maintenance is not a requirement of the ADC but out of the goodness of their hearts.

This work was recommended by your Council Arborists in January 2021 and has been delayed twice by Council staff, in the first instance because they wanted to find out the result of my resource consent application and then again in December 2021, which was offered after the resource consent hearing was denied and at the time was considered a small concession to then be withdrawn after the date in which I had the opportunity to appeal.

Based on my experience and the fact that the ADC has had 15 months to perform this work. I no longer trust that they take these recommendations seriously and the only remedial recommendation in the Arborists report that I would consider 100% safe and the right thing to do is to remove the tree, which I am happy to do at my own cost.

The ADC have proven to me that they pick and choose what expert advice they are given to act on and I therefore do not trust their motivation or judgement in this regard.

To add insult to injury after repeatedly asking Ian Hyde for a quote for a ballpark cost for the resource consent application, I was given the following explanation:

As has been said before it is difficult to estimate costs, however to help you, I have given an indicative scenario on the costs by a Commissioner. There are a number of variables in this, so you should not rely on it to be specific to your situation. In this example a decision maker might spend 5 hours reviewing information associated with an application and another 2 hours on a site visit. A half day hearing would be 4 hours and the decision maker could spend around 12 hours on a decision. At a rate of \$250 per hour, this would be a cost of \$5750 plus disbursements.

In relation to additional costs, we have tried to make the lodgement fee for a notified application approximate the average total cost of a notified consent, however there are a number of variables which come into play, for example if the Council needed to commission a report about the condition of the tree or if there were a number of submissions from parties who wished to be heard and which made the hearing longer than expected. Alternatively, there have been other applications where the applicant received a refund at the end of the process as not all of their deposit had been accounted for during it.

This left me with the impression that the process would in the ballpark of the deposit required for a fully notified hearing around \$6,627 to then receive a bill for a further \$10,000 was a complete slap in the face.

It's my understanding that the Council has no legislative obligation to maintain protected trees on private land, confirmed by Ian Hyde that the Council holds no liability, therefore there is no legislative reason that allows the Council to enter my property in relation to the tree unless you believe a non-complying activity is taking place.

Therefore I confirm as per my previous email to Rhonda and Ian Hyde, I don't believe I have to allow the ADC to perform any remedial work on the Lime tree and to do so without my permission, I would consider trespassing.

But primarily dealing with the ADC in any capacity causes me high anxiety and is therefore detrimental to my mental health, so at this point in time I do not give the ADC permission to perform the remedial work recommended by Brad Cadwallader 13 months ago.

Regards,

Evidence 3. f)

FW: Pruning Queens Drive Lime Tree

Ian Hyde <Ian.Hyde@adc.govt.nz>

To: Tracy Fleet

Cc: Ian Soper

You replied to this message on 25/02/2022 8:02 PM.

Reply Reply All Forward ...

Fri 25/02/2022 9:39 AM

Hi Tracy

Thank you for your response to Mr Soper, which I reply to on his behalf.

I would like to reiterate that the offer of assistance was provided to you in the interests of the ongoing maintenance of the tree as recommended by professional advice and that this offer still stands.

Council staff responses have been clear in previous communications so I do not intend to address your points individually except to acknowledge your understanding that the Council holds no liability for the tree.

We do however need to reinforce that because of your refusal to allow Council staff or contractors onto the site to inspect the tree or to undertake maintenance works, staff will not be able to assess its condition on an ongoing basis. This means that we will also not be able to identify any longer term effects of the works undertaken in December 2020 or issues which may emerge. If you have not already, you may wish to seek legal advice on the risks of holding this position.

Should you wish to implement works on the tree yourself by using your own contractors, please be aware that under 12.7.1 of the District Plan resource consent is required for all but minor maintenance works. The only exception is where a management plan has been approved by the Open Spaces Team for those works.

The Councils priority is to ensure the long term viability and ongoing safety of this listed tree. To this end, and given your position, the Council is considering its legal options to implement the recommendations of the arborist so as address the damage caused by the unauthorized works. We do however remain open to discussion of works to remediate the damage to the tree.

Kind Regards

Ian Hyde

Evidence 3. g)

Name Number 122096

Tracy Fleet

To: erin.regester@adc.govt.nz

Hi Erin,

I have received a final demand from the Ashburton District Council for additional costs in relation to a resource consent hearing under the above Name Number and relates to LUC21/0050.

Before making the application I tried to engage with Ian Hyde about the cost of the application as I wanted to make sure that I had the budget to afford it. Below is the response I received from Ian Hyde.

When I received the invoice I objected to it because the cost was 153% more than the application fee. I reasonably expected a +/- of 10% based on my communication with Ian Hyde, however the invoice received was a major shock and I think it's fair that due to an application I become an open cheque book for the Ashburton District Council to incur unreasonable expenses at my expense.

I also tried to raise the issue with Ian Soper and Ian Hyde on the 16th February as per below.

Email to Ian Soper and Ian Hyde

To add insult to injury after repeatedly asking Ian Hyde for a quote for a ballpark cost for the resource consent application, I was given the following explanation:

As has been said before it is difficult to estimate costs, however to help you, I have given an indicative scenario on the costs by a Commissioner. There are a number of variables in this, so you should not rely on it to be specific to your situation. In this example a decision maker might spend 5 hours reviewing information associated with an application and another 2 hours on a site visit. A half day hearing would be 4 hours and the decision maker could spend around 12 hours on a decision. At a rate of \$250 per hour, this would be a cost of \$5750 plus disbursements.

In relation to additional costs, we have tried to make the lodgement fee for a notified application approximate the average total cost of a notified consent, however there are a number of variables which come into play, for example if the Council needed to commission a report about the condition of the tree or if there were a number of submissions from parties who wished to be heard and which made the hearing longer than expected. Alternatively, there have been other applications where the applicant received a refund at the end of the process as not all of their deposit had been accounted for during it.

This left me with the impression that the process would in the ballpark of the deposit required for a fully notified hearing around \$6,627 to then receive a bill for a further \$10,000 was a complete slap in the face.

Response from Ian Hyde

On the 25th February I received the following response from Ian Hyde advising that he was unwilling to discuss this

Council staff responses have been clear in previous communications so I do not intend to address your points individually except to acknowledge your understanding that the Council holds no liability for the tree.

The reason for asking My Hyde for a reasonable estimate was because there was a limited amount of funds available for this process and I am not in a financial position to pay this amount.

I have requested a conversation and then a meeting with Hamish Rach regarding this whole situation because it is starting to feel like it has become a personal vendetta by Mr Ian Hyde which has been going on for 16 years now.

If I have to set up an instalment arrangement in the short term, to avoid legal action then I am open to discuss this on the basis that I still dispute the invoice.

Kind regards

Tracy Fleet

Evidence 4. a)

RE: Objection to invoice - LUC21/0050 30 Queens Drive

Ian Hyde <Ian.Hyde@adc.govt.nz>
To: Tracy Fleet
Cc: Mary Wilson

 Reply  Reply All  Forward 

Mon 2/05/2022 4:01 PM

Good afternoon Tracy

Just to update you. Late last week I made an enquiry about progress on your objection with the Commissioner.

My understanding is that due to his workload he will be unlikely to look into the matter until the middle of this month.

I can however confirm that our finance team have been instructed to take no further action in relation to the additional charging while the objection is ongoing.

Kind regards

Ian

Evidence 4. b) & Appendix [Should read Appendix 3 - Page 19-22](#)

LUC21/0050

Cara Badger <Cara.Badger@adc.govt.nz>
To: nixchick@hotmail.co.nz
 You replied to this message on 22/06/2022 12:23 PM.

 Reply  Reply All  Forward 

Thu 9/06/2022 1:56 PM

 Final decision on fees.pdf 213 KB  LUC210050.pdf 180 KB

Hello Tracy,
See attached correspondence regarding LUC21/0050.
Regards
Cara

Cara Badger | Strategy & Compliance Support Officer
DDI 03 307 7714 | M

TAX INVOICE

Tracy Ann Fleet
30 Queens Drive
Allenton
Ashburton 7700

Tax Invoice Number : 44991
GST Number : 51-641-051
Invoice Date : 26 Nov 2021
ePayment Reference : 00022163
Your Order Reference : **LUC21/0050**

Application Reference: LUC21/0050 - Resource Consents - Land Use Consents

Applicant: Tracy Ann Fleet

Location Address: 30 Queens Drive ASHBURTON

Charge Description	Qty	Unit Charge	Total Charge
LUC Planning Misc Charge (Post Hearing Charges)			\$8,593.62

Subtotal	\$8,593.62
GST	\$1,289.04

Total Amount Due **\$9,882.66**

Please pay by the 20th of month following the invoice date

Payment Methods

Online through the [Ashburton District Council](http://www.ashburtondc.govt.nz) website using ePayment reference 00022163
By direct credit to bank account **03-1592-0521970-00** referencing LUC21/0050
By post and in person to/at our Baring Square Offices

ASHBURTON DISTRICT COUNCIL

5 Baring Square West
Ashburton

PO Box 94
Ashburton 7740

P (03) 307 7700
E info@adc.govt.nz

www.ashburtondc.govt.nz

PAYMENTS RECEIVED				
		Amount	Invoice	Date
1	Application payment	\$ 1,332.00	INV-43154	25-May-21
2	LUC Misc- Fully notified payment	\$ 5,118.00	INV-43452	28-Jun-21
TOTAL PAYMENTS RECEIVED BY ADC		\$ 6,450.00		

ASSOCIATED CHARGES				
		Amount	Invoice	Date
1	Avanzar - Consultant Planner	\$ 6,882.75	INV-21107	09-Nov-21
2	Cadwallader Tree Consultancy	\$ 790.63	INV-00946	30-Sep-21
3	Cadwallader Tree Consultancy	\$ 1,043.63	INV-00951	11-Oct-21
4	Dean (Commissioner)	\$ 7,615.65	INV-19404	10-Nov-21
TOTAL CHARGES		\$ 16,332.66		
BALANCE TO BE PAID TO ADC (\$16,332.66-\$6,450)		\$ 9,882.66		

Cadwallader Tree Consultancy

33 Cropp Place
Richmond,
Nelson 7020

brad.cadwallader@cropp-place.nz
Ph: 03 544 0346
Cell: 027 2261666

Ashburton District Council
PO Box 94
Ashburton 7740

Order Number PA03320
Attention Rhonda Gallagher
Invoice Number INV00946
Invoice Date 30/09/2021
GST Number 15.183.632

Tax Invoice

Description	Quantity	Unit Price	Price
Tree Consultancy Services			
Damage - Town Green Oaks - site visit & report	5.5	110.00	605.00
Lights - Town Green Oaks - site visit & memo	.75	110.00	82.50

PAID BY ADC

Total Before GST	687.50
GST	103.13
TOTAL	\$790.63

Prompt payment is much appreciated.

We prefer payment by direct credit. Our bank details are:
030751-0335514-00 Please include invoice number with payment.

Please detach and return with your payment to

Cadwallader Tree Consultancy
33 Cropp Place
Richmond,
Nelson 7020

30/09/2021

Ashburton District Council, INV00946

TOTAL DUE \$790.63

brad.cadwallader@cropp-place.nz
Ph: 03 544 0346

Amount Being Paid _____



TAX INVOICE

Attention: Ian Hyde
Ashburton District Council
PO Box 94
Ashburton 7740
New Zealand

Date
10 November 2021

Invoice Number
INV19404

Reference

Planz Consultants Limited
PO Box 1845
Christchurch, 8140

GST: 57-961-759

P: 03 377 9829
E: admin@planzconsultants.co.nz
W: planzconsultants.co.nz

Commissioner - 30 Queens Drive, List Tree
Job No: J16355

Tasks	Time	Rate	Amount
Review Reports and Evidence	4.50	210.00	945.00
Hearing Attendance	6.50	210.00	1,365.00
Draft Decision	17.00	210.00	3,570.00
Issue Minute Discussions re revised hearing date and draft Minute 2.	2.25	210.00	472.50
Project Management Type up evidence from applicant and submitters.	2.00	60.00	120.00

Costs	Quantity	Rate	Amount
Mileage/km	120.00	0.70	84.00
A4 copying, black	56.00	0.30	16.80
A4 copying, colour	34.00	1.00	34.00
Admin Fee	1.00	15.00	15.00

PAID BY ADC

Subtotal	6,622.30
GST	993.35
Total	7,615.65
Amount Due	7,615.65

Due Date: 20 December 2021
Bank Account Details for Direct Credit Payments:
Westpac Bank 03-1705-0038951-00
Planz Consultants Limited

Please quote your invoice number as reference

Thank you for your business, it's appreciated

Cadwallader Tree Consultancy

33 Cropp Place
Richmond,
Nelson 7020

brad.cadwallader@cropp-place.nz
Ph: 03 544 0346
Cell: 027 2261666

Ashburton District Council
PO Box 94
Ashburton 7740



Order Number EN03186
Attention Sikandar Hirani
Invoice Number INV00951
Invoice Date 11/10/2021
GST Number 15.183.632

Tax Invoice

Description	Quantity	Unit Price	Price
Resource Consent Hearing - Fleet - LUC21/0050			
Aug. 2021 - Various discussions regarding aspects of the matter with Mary Clay & Ian Hyde, review application, submissions and various arborist reports.	1.75	110.00	192.50
30 Sept 2021 - Further review 5 arborist reports prior to hearing.	3	110.00	330.00
4 October 2021 - attendance via Zoom	3.5	110.00	385.00
Total Before GST			907.50
GST			136.13
TOTAL PAID			<u>\$1,043.63</u>

Prompt payment is much appreciated.

We prefer payment by direct credit. Our bank details are:
030751-0335514-00 Please include invoice number with payment.

PAID BY ADC

Please detach and return with your payment to

Cadwallader Tree Consultancy
33 Cropp Place
Richmond,
Nelson 7020

brad.cadwallader@cropp-place.nz
Ph: 03 544 0346

11/10/2021

Ashburton District Council, INV00951

TOTAL DUE \$0.00

Amount Being Paid _____



INVOICE

DATE: November 9, 2021
 INVOICE # 21107
 FOR: Queens Drive Tree Ashburton
 Attn: Ian Hyde

www.avanzar.co.nz
info@avanzar.co.nz
 027 742 2122
 267 Kerrytown Road
 RD5
 Timaru 7975

Description	Rate	Amount (\$)
Processing of LUC21/0050 for 35 Queens Drive, Allenton, Ashburton 7700		
Receive application, review, site visit and prepare S95 assessment. 15.5 hours	\$ 140.00	2,170.00
Receive and review submissions. Prepare S42A report and liaise with arborist. 19.25 hours	\$ 140.00	\$ 2,695.00
Prepare for hearing and attend hearing. 8 hours	\$ 140.00	1,120.00
PAID BY ADC		

GST Number : 92 852 302

SUBTOTAL	\$ 5,985.00
GST RATE	15.00%
GST	897.75
OTHER	-
TOTAL	\$ 6,882.75

If you have any questions concerning this invoice, contact Mary Clay, Principal Planner, ph 021 0298 6162 or email mary@avanzar.co.nz

SBS Bank Account for direct credits 03-1355-0055363-01
 Payment is due 7 days after the date of this invoice
 THANK YOU FOR YOUR BUSINESS!

This becomes a Tax Invoice when paid.
 Please retain a copy for your records.

Work	Employee Name	Date	Description	Duration (SUM)
14460 Ashburton DC Tree notified	Mary Clay	27/05/2021	Received Application. Check	1.25
14460 Ashburton DC Tree notified	Mary Clay	28/05/2021	Review, read all documents	0.25
14460 Ashburton DC Tree notified	Mary Clay	31/05/2021	Review, confirm complete	1
14460 Ashburton DC Tree notified	Mary Clay	2/06/2021	Background, prep for site visit (Liaise with ADC)	2.5
14460 Ashburton DC Tree notified	Mary Clay	3/06/2021	Site Visit	3.5
14460 Ashburton DC Tree notified	Mary Clay	4/06/2021	Research Prep S95	0.5
14460 Ashburton DC Tree notified	Mary Clay	8/06/2021	Research Prep S95	3
14460 Ashburton DC Tree notified	Mary Clay	9/06/2021	Research Prep S95	3
14460 Ashburton DC Tree notified	Mary Clay	10/06/2021	Research Prep S95	3.5
14460 Ashburton DC Tree notified	Mary Clay	11/06/2021	QA, changes to S95 report	1
14460 Ashburton DC Tree notified	Mary Clay	18/08/2021	Tree S42a report	1
14460 Ashburton DC Tree notified	Mary Clay	19/08/2021	Review submissions	1
14460 Ashburton DC Tree notified	Mary Clay	23/08/2021	Summarise submissions	3
14460 Ashburton DC Tree notified	Mary Clay	24/08/2021	Summarise submissions	3
14460 Ashburton DC Tree notified	Mary Clay	25/08/2021	S42A report	3
14460 Ashburton DC Tree notified	Mary Clay	26/08/2021	S42A report	2
14460 Ashburton DC Tree notified	Mary Clay	30/08/2021	S42A report QA, changes	1.25
14460 Ashburton DC Tree notified	Mary Clay	22/09/2021	Admin	1
14460 Ashburton DC Tree notified	Mary Clay	3/10/2021	Prep for hearing	1
14460 Ashburton DC Tree notified	Mary Clay	4/10/2021	Hearing attendance and prep	7
				42.75

PAID BY ADC

Appendix 3

Resource Management Act 1991

Ashburton District Plan

Resource Consent Application LUC21/0050

Objection Under section 357A of the RMA to additional costs for processing the application

Introduction

1. There is a very large Lime tree (Tilia Tomentosa - Silver Lime or Tilia Europa – Common Lime) on the property at 28 Queens Drive, Ashburton. This tree is protected from removal or unauthorised pruning under the Ashburton District plan.
2. Prior to these proceedings No's 28 and 30 Queens Drive were held together in one ownership, with a house on 30 and the tree on 28 which was otherwise vacant. The two properties have been sold separately. Ms Tracey Fleet is the current owner of No 28 and therefore of the tree. ①
3. There was a long history, said to be 16 years, by the previous owners and more recently by Ms Fleet trying to get some help from the Council in dealing with what they considered to be a very dangerous tree. ②
4. The tree has three codominant trunks, and this is considered by some arborists who have assessed the tree on behalf of the owners in the past to be a significant weakness that could lead to trunks or limbs splitting away and falling. Because of the size of the tree this could pose a significant danger to owners and occupiers of the property and neighbouring properties.
5. Other arborists retained by the Council disagree about the condition of the tree and therefore its safety and risk.
6. At some stage in the past the tree has been braced with wire cables, and if it is to remain the Council's arborists agree that this system must be retained and maintained.
7. On acquiring the property Ms Fleet continued with attempts to have the tree removed. Little progress appears to have been with these discussions and MS Fleet made a unilateral decision to have the tree felled, or at least heavily pruned. Her exact intention has not been made clear to me but that is immaterial. ③
8. Operations on the tree commenced and were halted by the Council, and an abatement notice has been issued. By that stage some major cuts had been made and the tree partially ring barked. Photographs I have seen however show that it is still a very large tree.
9. The position has now been reached that the Council's arborists consider that with some further pruning to balance the tree, and repair of the cable bracing system, the tree could be saved. Regrowth would occur and the tree may have many years of life remaining. However Ms Fleet, and a number of her neighbours and other people strongly disagree. The Council's arborist, Mr Cadwallader also noted that if decay set in from the major cuts which were made, the remaining life of the tree could be as short as 10-15 years.
10. Ms Fleet has made enquiries and learnt that it may be very difficult or impossible to get liability insurance for this tree, and because of that it would not be possible to get a mortgage to enable her to build a dwelling on the section.

① incorrect

② including the Walter Collier

③ incorrect prior to December 2020

④ opinion & not relevant to purpose

The Resource Consent Application

- ⑤ Irrelevant
⑥ Status decided by many clay
⑦ All in support
- ⑤
11. Ms Fleet then made a resource consent application to remove the tree. It has not been made clear to me whether the Council suggested this or whether it was her own decision.
12. The status of the application under the district plan was that it was a non-complying activity. ⑥
13. The application was publicly notified and a number of submissions received, mostly in support of the application. ⑦ A hearing was held before Mr Dean Chrystal, a Hearings Commissioner. Consent was declined, due to the preliminary test for non-complying activities under Section 104D of the Resource Management Act (the RMA). There are two parts to this test and the application failed both of them. Firstly it would be contrary to the key objective in the district plan for the protection of a heritage tree. Secondly the effects on landscape and amenity would clearly be more than minor, noting that s104D only allows the adverse effects of the application to be considered and not any positive effects, such as the relief from stress and mental health issues for the landowner and surrounding residents that were being caused because of concerns about the safety of the tree.
14. Having made that finding, the outcome was inevitable. Section 104D provides that unless an application does not pass at least one of these tests it must be declined.

The objection

- ⑧ Incorrect relies to fixed rebates to fixed charges under 36(5) and then 36(6) would apply and an estimate must be provided.
- ⑧
15. Following the decision, Ms Fleet received an invoice from the Council for additional costs for processing the application. Having already paid a fee deposit of \$ 6,450.00 she has now been required to pay an additional sum \$9,092.03. She has lodged an objection against those fees under section 357B of the Resource Management Act 1991.
16. I am now charged with resolving the applicant's objection against the fees she has been charged for this application.
17. In her objection Ms Fleet has not specifically examined or criticised the detailed makeup of the fees. Instead the objection is in more general terms. In particular she says she enquired before making the application how much the fees were likely to be, and in response Mr Ian Hyde, the Planning Manager at the Council provided a hypothetical example based on the number of hours it might take to process a typical notified application. It is worth quoting the exact wording of Mr Hyde's advice, from emails which have been provided to me. He wrote ⑨ ⑩

As has been said before it is difficult to estimate costs, however to help you, I have given an indicative scenario on the costs by a Commissioner. There are a number of variables in this, so you should not rely on it to be specific to your situation. In this example a decision maker might spend 5 hours reviewing information associated with an application and another 2 hours on a site visit. A half day hearing would be 4 hours and the decision maker could spend around 12 hours on a decision. At a rate of \$250 per hour, this would be a cost of \$5750 plus disbursements.

In relation to additional costs, we have tried to make the lodgement fee for a notified application approximate the average total cost of a notified consent, however there are a number of variables which come into play, for example if the Council needed to commission a report about the condition of the tree or if there were a number of submissions from parties who wished to be heard and which made the hearing longer than expected. Alternatively, there have been other applications where the

⑨ No submission was made by me so how did he determine this?
⑩ Incorrect his hypothetical related to Commissioner time only.

applicant received a refund at the end of the process as not all of their deposit had been accounted for during it.

11. It is clear from this that Mr Hyde was careful to note that costs could well be different from this scenario due to the circumstances of the case. In the event it was necessary to involve an arborist, there were submissions, and the hearing took more than a half day, as Mr Hyde indicated could happen. (11)
12. Ms Fleet said that she assumed that the actual costs might vary by plus or minus 10% from the hypothetical example. That was her assumption and not that of Mr Hyde. (12)
13. With the benefit of hindsight it may have been wiser to provide a range of actual costs of past applications, rather than the hypothetical scenario. However I make no criticism of Mr Hyde for this. He was asked a difficult question and gave the best answer he could. (12)
14. I have examined the breakdown of the fees charged. They are based largely on the hours of the three professionals the Council employed, the Commissioner Mr Chrystal, the planning consultant Ms Mary Clay, and the consultant arborist Mr Cadwallader. (13)
15. Mr Cadwallader's fees came to \$907 (+ GST), for 8.25 hours at \$110 per hour. His work consisted of discussions regarding aspects of the matter with Mary Clay & Ian Hyde, reviewing the application, submissions and various arborist reports prior to hearing, and attendance at the hearing by Zoom. (14)
16. I consider this to be a fair and reasonable number of hours, especially since his attendance at the hearing lasted 3.5 hours. Nor do I question his hourly rate which seems very reasonable. (15)
17. Ms Clay produced two reports for the Council, firstly a report on whether the application should be notified, and secondly on the substantive merits of the application for Mr Chrystal's consideration. I have studied these reports Both reports were careful and comprehensive. They deal with all the matters I would expect to see and, in my opinion, come to the correct conclusions in the circumstances of the case, especially on section 104D of the RMA. By setting out the background and history, and the competing issues, the reports would have assisted Mr Chrystal to come up to speed quickly and efficiently and shortened the time he would have otherwise had to spend familiarising himself with the details of the case. (14)
18. Ms Clay's costs came to \$6,882.75, (incl. GST) consisting of 15.5 hours to receive and review the application, carry out a site visit and prepare the notification report, 19.25 hours to receive and review the submissions, liaise with the arborist and prepare the hearings report, and 8 hours to prepare for and attend the hearing. Her charge out rate is \$140 per hour, which is typical for the industry. (15)
19. Ms Clay is a very experienced planning consultant and obviously understands her role in matters such as this very well. The bulk of her time was spent on producing the two reports. Her reports are clear and comprehensive and I expect would have been of considerable assistance to Mr Chrystal. They are precisely the type of reports I would have expected to receive had I been the Hearings Commissioner hearing the application. In these circumstances the only question I can ask myself is whether the number of hours is excessive. I have concluded that they are not for an application involving as many issues as this one, complicated by the past history and the enforcement action. (16)

(16) Not relevant to the Resource Consent application. as application related to inherent structural defects already present

(11) This was already provided under the Criminal Care Evidence.
(12) Mr Hyde would have been aware of who he planned to engage so could have provided a more accurate estimate.
(13) Not provided to me as to applicant.
(14) The second report contained an opinion about the children in Ashburton referencing Harry Potter not very professional.
(15) Then why the unprofessional report to Harry Potter + Sherwood Forest.

⑪ relevant question is whether the applicant pays if the Council made a unilateral decision to appoint anyway

27. Mr Chrystal's costs came to \$7,615.65 (including GST), consisting of reviewing the application, reports and evidence, attending the hearing, drafting the decision, preparing and issuing a Minute to the parties, and some miscellaneous office costs. His charge out rate is \$210 per hour, which is typical or even slightly low for the industry.

28. Having read the decision, and based on my own extensive experience as a Hearings Commissioner I do not consider Mr Chrystal's time and costs are excessive for a rather unusual application such as this.

29. . Once the application had been made then it had to be processed and the costs incurred in the process are reasonable. I do not see any work that was unnecessary, done poorly or took too much time. I do not see any basis for reducing the additional fees charged for what was done.

30. I also understand that the Council incurred additional administration costs. These included lodging and notifying the application and providing support for the hearing and decision. None of this time was on charged, nor was the time that the District Planning Manager spent in responding to the requests of the applicant. To that extent the Council has off-set some of the costs of this application.

31. That is enough to reach a decision on this objection.

32. Having come to these conclusions on the costs, I conclude that the additional costs charged by the Council are fair and reasonable for an application of this nature, scale and complexity. The result is that the objection by Ms Fleet must be disallowed.

Decision

That the Objection by Ms Fleet to the additional charges for the resource consent application Number LUC21/0050 is disallowed.

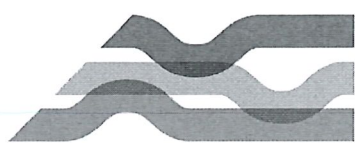
D. L. Mountford

Hearings Commissioner

8 June 2022

Appendix 4

LUC21-0052 Tracey Fleet
30 Queens Drive, Allenton, Ashburton



Ashburton
DISTRICT COUNCIL

Notrep01

Vers 1.0

July 2014

Sections 104, 104A-D & 108 of the Resource Management Act 1991

Section 42A Planning Report for Hearing

Applicant's Name:	TRACY ANN FLEET
Street Address:	30 Queens Drive, Allenton, Ashburton 7700
Legal Description of Site:	Lot 42 DP23494
Zone:	Residential C
Consent number:	LUC21/0050
Application summary:	Removal of a listed tree – Tilia Tomentosa / x Europa at 30 Queens Drive, Allenton, Ashburton.
Status:	Non-complying
Date of Site Visit:	Thursday 3 rd June 2021
Section 92 request:	N/A

Notification:	The application was recommended to be publicly notified and was notified on the 3 July 2021.
Submission Close Date:	30 July 2021
Submissions:	A total of three (14) submissions were received within the submission period, with one (1) additional late submission received after the closing date. This late submission was consequently accepted by way of Commissioner's decision dated 19 August 2021. A summary of submissions is attached to this report (Appendix A).
Recommendation:	That subject to new or additional evidence being presented, the application be declined in its present form pursuant to section 104D of the Resource Management Act.

1 INTRODUCTION

This report has been prepared on behalf of the Ashburton District Council (the Council) as consent authority in accordance with section 42A of the Resource Management Act 1991 (RMA). This report has

been prepared to assist the Commissioner acting as the consent authority under delegation. It should be noted that the recommendations made in this report are made at the time of writing with the information available. The recommendations herein are in no way binding and it should not be assumed that the Commissioner will reach the same conclusions having heard all the evidence.

My name is Mary Clay. I am a planning consultant with Avanzar Consulting Ltd. I hold a Bachelor of Science (Geography) from the University of Canterbury and a Master of Applied Science (Environmental Management) from Lincoln University. I have worked in the field of planning/resource management since 2001, both for Councils and as a planning consultant both in New Zealand and the United Kingdom with some 20 years of experience.

My work has been varied during this time, however I previously worked for the Christchurch City Council as a planner processing resource consents. At the Rutland County Council I spent time working on site with their consultant arborist and processing planning applications and appeals relating to protected and significant trees.

I confirm I have read the Code of Conduct for Expert Witnesses and agree to comply with it. In that regard I confirm that this planning report is written within my area of expertise, except where otherwise stated, and that I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. The processing of the resource consent application and preparation of this report has been undertaken with specialist advice from Mr Brad Cadwallader.

Mr Cadwallader's assessment is attached as **Appendix B**.

2 DESCRIPTION OF THE PROPOSAL

The applicant proposes the removal of the large protected Tilia Tormentosa – Silver Lime (or Tilia Europa) on the site. The applicant seeking the removal states that they require the removal due to the existence of two structural defects that could cause harm to persons and property.



3 DESCRIPTION OF THE EXISTING ENVIRONMENT

The site is currently vacant, and remains open, with no fence between it and the adjoining site at 28 Queens Drive. Some landscaping remains on the site but the prominent feature of the site remains the large protected tree.

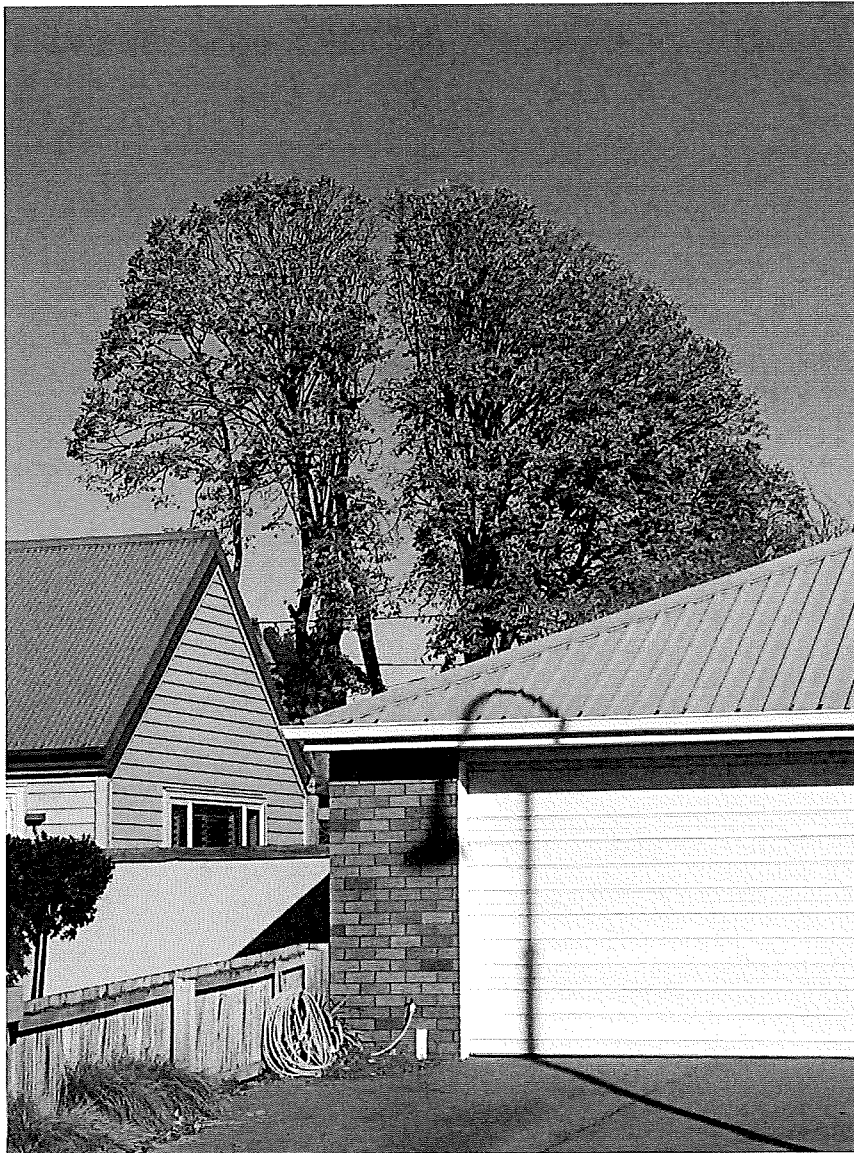


View from the northwestern end of Queens Drive June 2021



View of the tree from on site – June 2021

The Lime Tree on the site was originally identified as a Common Lime however it is now understood to be a Silver Lime, or *Tilia Tormentosa*.



View from Trellech Place

A Silver Lime, or *Tilia tomentosa* is described by the Royal Horticultural Society as:

T. tomentosa is a large, deciduous tree of variable habit but usually broadly pyramidal reaching to 25m high. Erect branches are often pendent at their tips with white-felted shoots. Rounded leaves 5-13cm long are sharply-toothed, dark green above and covered in a silvery-white felt beneath, turning yellow in the autumn. Fragrant, small, creamy-white flowers are borne in late summer.

The International Dendrology Society's website describes *Tilia Tormentosa* as follows:

A European native, *Tilia tomentosa* is among the most familiar limes grown in Western Europe. Long cultivated in its natural range and grown commercially for its timber in Bulgaria and Romania (Pigott 2012), an early date for its introduction further west seems very likely. In Britain, the species was in James Gordon's Mile End Nursery in 1767 (Aiton 1811); Moench's name of 1785 was published in a catalogue of trees in a German park (Pigott 2012).

Tilia tomentosa is the only member of Section *Astrophilyra* (characterised by stellate hairs beneath the leaves) native to western Asia or Europe; the majority, including some which quite closely resemble Silver Lime, are found several thousand miles away in East Asia.

This is a variable species in southeastern Europe, in leaf shape, hairiness and crown form. Cultivated material further north and west apparently has a much narrower genetic base: trees here usually have erect branches forming a broadly

conical crown, orbicular leaves with a cordate base, and such a dense tomentum beneath the leaves that they appear white (Pigott 2012). The tree responds to periods of heat and drought by angling its leaves so that the underleaf faces outwards or even upwards; the crown appears to turn white, reverting to dark green under cooler, moister conditions. The effect is to reflect more solar radiation, reducing leaf temperature and perhaps rate of water loss through transpiration (Hirons & Thomas 2018). The white-backed leaves make it easy to pick out in the landscape and viewing a Balkan hillside with all the *Tilia tomentosa* leaves ashimmer is a wonderful experience.

In Britain, this is the most vigorous and largest-growing of the 'white-leaved' limes. Many were planted in or around 1800. Two of these, grafted on Common Lime, survive at Highclere Castle, Hampshire, the larger 19 m, dbh 2.05 m in 2012; a famous tree in the paddock next to Tortworth church, Gloucestershire was 34 m, dbh 1.73 m in 2015 (Tree Register 2018). Silver Limes grow well at least as far north as Central Scotland. Examples include an avenue lining the southern drive at Castle Milk, Dumfriesshire (Tree Register 2018), and there are fine specimens at Doune Park near Stirling (T. Christian, pers. comm. 2020). Probably the tallest measured trees, in warmer, more continental climates are 37 m specimens at the Royal Museum for Central Africa, Tervuren, Belgium, (measured 2011) and at Sarrot near Pau, France (measured 2018). A tree of probable wild origin at Bogat, Hungary was 2.04 m dbh in 2001 (monumentaltrees.com 2018). It is hardy as far north as the very south of Finland, where trees planted in the 1920s grow at the Arboretum Mustila (Arboretum Mustila 2020). Aphid resistance and a degree of drought tolerance make *Tilia tomentosa* a popular choice as a lime for street planting.

Long cultivated and common in North America (Jacobson 1996), *Tilia tomentosa* is widely growable in our area, and represented in many collections. Coupled with cold tolerance, its drought tolerance (perhaps the most of any linden – Missouri Botanical Garden 2020) makes it viable even in parts of the central United States.

Many cultivars have been selected in Europe and North America, Hungary being particularly important. Most are clones chosen for their good crown form, at least in youth. Where uniformity is desired, for example in avenues, even those cultivars whose distinctive features cannot easily be described have value. Jablonski & Plietzsch (2014) provide a thorough checklist.

Two old variegated cultivars were recorded in 1903, 'Aureo-Variegata' and 'Pendula Variegata' (Beissner et al. 1903 fide; Jablonski & Plietzsch 2014) but are assumed to be lost to cultivation, as is the way with variegated limes.

In literature, the Silver Lime tree would be familiar to many children in Ashburton and worldwide, as one of the wandwood species referred to in the books of Harry Potter by JK Rowling.

At the time this application was notified, in autumn, the lime retained some of its leaves, and showed signs of new growth below some of its wounds. The lime tree shows evidence of unauthorised pruning just prior to Christmas 2020, on its eastern side, although new growth is evident below the wounds. The tree has also been recently partially ringbarked, and following this, signs were attached to the tree advising that it is an offence to carry out unauthorised work on the tree. An abatement notice is also attached to the trunk of the tree.

4 SUBMISSIONS SUMMARY

A notification report and decision dated 14 June 2021 sought that the application to remove the protected Lime tree would be publicly notified. The application was publicly notified on the 3 July 2021 and submissions closed on the 30th July 2021. 14 submissions were received by the due date, with one further submission received and accepted by the commissioner on the 19 August 2021 pursuant to sections 37a and 37A of the Resource Management Act 1991. On that basis all these submissions have been provided to the Council's arborist Brad Cadwallader.

The submissions are summarised below, full copies of the submissions have been provided to the Commissioner and are available to any party on request. An assessment of the matters raised in the submissions is included within the assessment of effects of the proposal later in this report.

reference to a
Ashburton
book

Submission 1 – ID Harding

ID Harding comments that the tree is a danger to the house, glasshouse and workshop at 32 Queens Drive, Allenton. ID Harding provides photographs of the tree as viewed from 32 Queens Drive.

Submissions 2 – Neil Baynes of 157 Harrison St, Ashburton

My Baynes noted that he mowed the lawns at 30 Queens Drive for the previous owner between Dec 2012 and 2016 and had felt concerned about the safety of the tree at the time. He notes that after a heavy rain that water would pool between the three trunks, and was concerned about the prospect for rot or decay. Mr Baynes feels that with the three main trunks each leaning and supported by rope, that it is just 'an accident waiting to happen'. Mr Baynes considers that the tree should be removed.

Submission 3 - Ruth Bowater

Ms Bowater states that the tree poses significant risk to property and should be removed.

Submission 4 – Joy Coleman – 23 Queens Drive, Allenton

Ms Coleman states that the tree is dangerous and that she has been living in Queens Drive for 21 years and has frequently in a norwest wind had branches 2-3 metres long in her garden. She also knew the previous owner who was afraid to sleep in parts of his house in strong winds. Ms Coleman has grave concerns for the neighbours who might be hurt by the tree.

Submission 5 – Alistair Waddell – 21 Reighton Drive, Allenton

Mr Waddell states he is a frequent visitor to Queens Drive and can see the tree is too close to many houses. He expresses concern that the tree could split at any time and could hit a house of people. He considers that health and safety should be the primary consideration. Mr Waddell thinks the tree should be removed.

Submission 6 – Ray and Jennie Swan – 7 Osborne Grove, Allenton

Mr and Mrs Swan support the resource consent application to remove the tree. Their reason is that flawed nature of the Ashburton District Council's District Plan regarding this protected tree and other trees in the community. They have concerns regarding the structural defects in the tree noted by Mr Fielding Cotterell. They noted that as gardeners for the previous owner, that he expressed his tree concerns to them. They also consider that the preservation of all aspects of human life come before saving a tree.

Submission 7 – Catherine Mary Luck – 11/14 Kauri Road, Birkenhead, Auckland

On reading the application and supporting arborist's report, Ms Luck is concerned about the structural integrity of the tree and considers that no private landowner should be subject to the liability for the failure of the tree and that no local government should be allowed to protect a tree that is structurally unsound

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and 'put a landowner in the position where the tree is too risky for insurance underwriters'. She seeks the removal of the tree, as well as seeking review of the District Plan regarding structurally unsound trees.

Submission 8 – Peter Freeman - Birkenhead, Auckland

On reading the application and supporting arborists report, Mr Freeman is concerned about the structural integrity of the tree and considers that no private landowner should be subject to the liability for the failure of the tree and that no local government should be allowed to protect a tree that is structurally unsound and 'put a landowner in the position where the tree is too risky for insurance underwriters'. He seeks the removal of the tree, as well as seeking review of the District Plan regarding structurally unsound trees.

Submission 9 – Corrin Miller – 7 Malfroy Lane, Raumati, Kaipiti Coast

Corrin Millers submission expresses concern around mental health and wellbeing of the applicant and surrounding neighbours.

Submission 10 – Les and Diane Hunter – 93 Wills Street, Ashburton

Les and Diana Hunter state that they fully understand the problems with the ADC Town Planner and have a similar problem with a protected tree. They question the validity of the process used to make them protected. They consider there is one rule for Council and a different rule for private property owners to remove trees.

Submission 11 – Alistair Perkins – 18 Russell Avenue , Ashburton

Alistair Perkins supports the removal of the tree on safety grounds and knowledge of the stress it causes.

Submission 12 Caroline Mary McIntosh – Dunedin North

Ms McIntosh supports the removal of the tree on the grounds of health and safety. She is the daughter of the previous owner. She considers the tree is endangering the physical health and safety of all individuals within its fall zone and also has a significantly negative impact on the mental and emotional wellbeing of individuals within its fall zone. She notes that the previous occupants and others advised the Council of their concerns but no effective remedial action was taken by the Council.

Submission 13 Gary Edward Maxey – 53 Farm Road, Ashburton

Mr Maxey seeks the removal of the tree to remove the health and safety risks and states that no insurance company would insure the tree from any damage it may inflict on the neighbouring houses.

Submission 14 Robert Lester Engelbrecht – 20A Harrison Street, Ashburton

Mr Engelbrecht notes that the silver lime has been held together by heavy cables and that there are health and safety and potential liability issues if any cables give way. Mr Engelbrecht considers that the tree is 'past its used by date'.

Submission 15 Kathleen Goulter – 67 Trevors Road, Ashburton

Ms Goulter is concerned for the safety of neighbours and visitors, and considers that the tree is not secure. She is also aware of the distress the tree has caused.

5 ASHBURTON DISTRICT PLAN

5.1 Relevant District Plan Rules

The applicable Plan rules are contained in the Operative Ashburton District Plan

The proposed activity is located in an area zoned Residential C zone under the Operative Plan. The land surrounding the site is also zoned Residential C.

The proposal does not comply with the following rules in the Operative District Plan:

Rule 12.7.5 f) the destruction or removal of any tree listed in Appendix 12-4 as Protected Trees (other than a dead, hazardous or dangerous tree)

The proposal is therefore a non-complying activity.

It is noted that the maintenance trimming of any listed tree that does not meet the provisions of a permitted activity is a restricted discretionary activity under rule 12.7.3 however it is considered that the pruning work already unlawfully carried out on the tree does not qualify as maintenance trimming, as the extent of the pruning already carried out, and the methods utilised, cannot accurately be described as maintenance trimming.

Activity Status

The application is a **non-complying activity**. This means that the application is subject to the 'threshold test' under section 104D in order to be eligible for approval.

6 STATUTORY CONSIDERATIONS

6.1 Sections 104, 104B & 104D

Section 104(1) of the RMA provides the statutory requirements for the assessment of the application and sets out those matters that the consent authority must have regard to when considering the application and submissions received. Subject to Part 2 of the RMA, it is considered that the relevant matters for the assessment of this application include:

- a) *Any actual or potential effects on the environment of allowing the activity; and*
- ab) *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; and*

- b) *The relevant provisions of the Ashburton District Plan and the Canterbury Regional Policy Statement; and*
- c) *Any other matter that the consent authority considers relevant and reasonably necessary to determine the application.*

When forming an opinion in relation to any actual or potential effects on the environment of allowing the activity, section 104(2) allows the consent authority to disregard an adverse effect of the activity on the environment if the District Plan permits an activity with those effects (the permitted baseline).

Section 104(3) states that a consent authority must not have regard to trade competition or the effects of trade competition, or any effect on a person who has given written approval to the application. The application provided written approval from the following persons:

Table 1		
Address	Legal Description	Owner / Occupier
26 Queens Drive	Lot 44 DP 23494	Owner
28 Queens Drive	Lot 43 DP 29434	Owner Occupier
30 Queens Drive	Lot 42 DP 23494	Owner
34 Queens Drive	Lot 40 DP 23494	Owner

Section 104D sets out particular restrictions for non-complying activities, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

- (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*

Under section 104B of the RMA the Council may grant or refuse an application for a non-complying activity, and if it grants the application, may impose appropriate conditions in accordance with section 108 of the RMA.

6.2 Part 2

The application of Part 2 in the context of considering resource consent applications has been impacted by case law arising from the High Court Decision of *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 (Davidson Decision). That decision set out that there was no ability to consider Part 2 of the RMA as a separate exercise in line with the ‘overall judgment approach’ that prevailed prior to this judgement. Rather any consideration of Part 2 is in the context of section 104, unless there is invalidity, incomplete coverage, or uncertainty of meaning in the statutory planning documents, in which

case the consent authority may refer to Part 2 in determining an application. However, following the decision of the Court of Appeal [NZCA 316] in relation to this matter, it is my understanding that an assessment subject to Part 2 is once again appropriate in certain circumstances and in particular where a plan has not been prepared in a manner that reflects the provisions of Part 2.

Part 2 of the RMA sets out the purpose and principles of the RMA, being “to promote the sustainable management of natural and physical resources” which is defined to mean:

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.*

Section 6 sets out matters of national importance, there are no matters of national importance considered of particular relevance to the processing of this application.

- a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development*
- b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- f) The protection of historic heritage from inappropriate subdivision, use, and development:*
- g) The protection of protected customary rights:*
- h) The management of significant risks from natural hazards.*

Section 7 requires particular regard to be had to ‘other matters.’ Of relevance to this application are:

- (b) the efficient use and development of natural and physical resources:*
- (c) the maintenance and enhancement of amenity values:*
- (f) maintenance and enhancement of the quality of the environment:*

Section 8 requires the principles of the Treaty of Waitangi to be taken into account. No particular cultural matters have been identified in relation to this application for the removal of an exotic tree.

7 ASSESSMENT OF ENVIRONMENTAL EFFECTS (SECTION 104(1)(a))

7.1 Written Approvals (Section 104(3)(a)(ii))

Under section 104(3)(a)(ii) of the RMA, the consent authority must not consider any effect on a person who has given written approval to the application.

Table 2		
Address	Legal Description	Owner / Occupier
26 Queens Drive	Lot 44 DP 23494	Owner
28 Queens Drive	Lot 43 DP 29434	Owner Occupier
30 Queens Drive	Lot 42 DP 23494	Owner
34 Queens Drive	Lot 40 DP 23494	Owner

7.2 Permitted Baseline (Section 102(2))

Section 104(2) of the RMA sets out that when considering the effects of allowing an activity, a consent authority may disregard an adverse effect if the plan permits an activity with that effect.

In this instance, I do not consider that there is any permitted baseline to be considered in the assessment of this proposal.

7.3 Relevant Assessment Matters

As a non-complying activity, it is noted that the full range of adverse effects must be considered. The key effect though, is the actual effect on the tree in question.

The Ashburton District Plan contains a series of assessment matters that generally apply to resource consents relating to protected trees, although in this instance it is important to note that the proposal is non-complying and thus all effects on the environment can be considered.

12.9.2 Protected Trees

- a) *Any adverse effects of the proposed activity on the values of the listed tree.*
- b) *The condition and future life expectancy of the tree including any potential hazard to persons or property.*
- c) *The effect of any pruning, damage or disturbance to the crown or root system of the tree on its appearance and health.*
- d) *Whether the tree is currently causing, or likely to cause, significant damage to buildings, services or property, whether public or privately owned.*
- e) *For removal of a tree: the condition of the tree, including whether it poses a danger to people or property, or whether its condition is such that it is unable to be maintained.*
- f) *Whether the applicant has the ability to undertake a complying development without the work detrimentally affecting the tree, and whether the tree or trees seriously restrict the development of the site for its zoned purposes.*
- g) *The effect of any building or structure on the visibility of the tree from a road or public place.*

- h) *Whether the tree still retains the essential characteristics for which it was originally protected.*
- i) *Any substitute or compensating tree planting proposed.*
- j) *Whether the particular species of tree has been legally declared a noxious plant.*
- k) *Consideration of the purpose of and need for the proposed works, particularly in relation to proposed infrastructure, servicing or utility works, including consideration of alternatives, functional constraints, and the wider benefits of a proposal.*

As noted above in the background section of this assessment, the protected tree in question was allegedly wilfully damaged in late December and was heavily pruned and partially ringbarked at that time. Some of the props supporting the tree were also damaged at that time. Subsequent to this action, the Council undertook remedial works, and has since sought expert advice regarding the health and safety of the tree. Mr Cadwallader, of Cadwallader Tree Consultancy, and Mr Jemmett of Four Seasons Treecare have evaluated the tree for the Ashburton District Council.

Mr Cadwallader notes in his assessment that some ringbarking has occurred, but that in his view, the percentages ringbarked would not be:

'...sufficiently high enough to cause the short-term death of the tree as satisfactory conductivity remains to ensure the roots receive starch and other assimilates from the canopy, and that the canopy is conversely provided the moisture it requires from the root system'.

Mr Cadwallader goes on to state that:

'During my visit to the site in March I noted that the remaining canopy was unaffected by the ringbarking. By late April the canopy was still full and healthy, and some regrowth was observed arising from the truncated stems). If the cuts had been more severe then canopy death would have resulted.

The tree has a cable support system installed in the canopy (image 4). One or two of the cables appears to have been cut during the partial removal of the tree however the canopy still appears to be well supported. Further closer inspection of the support system will be required.

The partial removal of two of the stems has unbalanced the canopy and therefore some corrective pruning will be necessary if the tree is to be retained'.

He further notes:

'While the short-term damage to the tree has not affected tree health or stability, the long-term damage that will result from the ringbarking is much more serious.

Over the next 10-15 years, decay is likely to become well-established in the main stems and the ongoing retention of the tree will much depend on the ability of the tree to produce new wood each year to provide future stability. The other aspect of damage caused to the tree is the loss of some of its visual appeal.'

When I visited the site, in early June, there was clear evidence of regrowth at the truncated stems.

Having regard to the expert advice, it is important to consider the effects of the proposed removal of the tree against its values. It is also important to consider the assessment matters however it should be noted that many of these do not anticipate recent damage in an attempt for removal or reduction, thus making a direct assessment against assessment matters more difficult.

No proof that the
ringbarking has
had an effect
on the crown
system.

Clearly the recent pruning and ringbarking has had an effect on the crown system of the tree, and on its appearance and health. However, the report provided by Mr Cadwallader indicates that the pruning undertaken is not terminal, and that with management, the tree could be expected to live for many years. He also discussed the cabling system and noted that due to the damage caused to it that it would require reassessment and corrective steps taken as well as additional pruning for balance.

The applicant has provided alternative evidence from 2015, indicating that the tree is no longer safe, and further, has provided a letter from an insurance broker indicating that they had been unable to gain liability insurance for the property.

It is helpful therefore to consider the reasons for the rules and the anticipated environmental results.

The Plan's anticipated environmental result for protected trees is:

'The retention, within their natural life spans, of trees or groups of trees, which have significant value to the District's residents and visitors'

The Plan then notes, within the reasons for the rules, that *'protected trees are considered worthy of recognition because of their ecological, environmental, landscape, heritage or cultural role, and goes on to note that protected trees are 'those that stand out for their particular contribution to the environment'*

Finally, the plan notes that removal of protected trees is a non-complying activity due to their high level of significance.

The tree in question, both before and after its recent pruning and ringbarking, is an impressively sized specimen of lime, visible from some distance from the site in all directions. It is the largest tree in its immediate vicinity, with the closest large specimen trees located in the Ashburton Domain. Furthermore, it is described as both a common lime and silver lime by different arborists. Irrespective of its actual variety, it was originally identified through the District Plan Process as being worthy of protection. Its characteristics ensure that it has a significant contribution to the local urban environment, and according to Mr Cadwallader, recent pruning and ringbarking has not caused any immediate health and safety concerns for adjoining properties.

The following excerpt from Mr Cadwallader addresses the implications of the damage to the tree cause by the applicant in December 2020.

2. Damage to the Tree

- 2.1 As can be seen on the attached inspection record and images, each of the three stems have sustained a chainsaw wound around a portion of their circumference. Stem A has had 64% of the circumference cut, Stem B 28% has been cut and Stem C has had 44% cut.

- 2.2 In my view, these percentages are not sufficiently high enough to cause the short-term death of the tree as satisfactory conductivity remains to ensure the roots receive starch and other assimilates from the canopy, and that the canopy is conversely provided the moisture it requires from the root system.
- 2.3 During my visit to the site in March I noted that the remaining canopy was unaffected by the ringbarking. By late April the canopy was still full and healthy, and some regrowth was observed arising from the truncated stems (see image. 3). If the cuts had been more severe then canopy death would have resulted.
- 2.4 The tree has a cable support system installed in the canopy (image 4). One or two of the cables appears to have been cut during the partial removal of the tree however the canopy still appears to well supported. Further closer inspection of the support system will be required.
- 2.5 The partial removal of two of the stems has unbalanced the canopy and therefore some corrective pruning will be necessary if the tree is to be retained.
- 2.6 While the short-term damage to the tree has not affected tree health or stability, the long-term damage that will result from the ringbarking is much more serious.
- 2.7 Over the next 10-15 years, decay is likely to become well-established in the main stems and the ongoing retention of the tree will much depend on the ability of the tree to produce new wood each year to provide future stability.
- 2.8 The other aspect of damage caused to the tree is the loss of some of its visual appeal.
- 2.9 In my 35 years' experience in the tree industry I can say that this act of ringbarking a tree prior to its removal is unheard of. In my opinion it makes no sense at all and one can only conclude that it was carried out with cynical intent.

Mr Cadwallader then concludes with comment regarding remedial works that can be undertaken.

3. Recommendation for Remedial Works

- 3.1 I agree with the Jemmet assessment of the tree that there are two options to explore at this point in time: there being 1) removal and 2) crown reduction and retention.
- 3.2 I am of the view that the tree is not immediately dangerous and that efforts could be made to restore the canopy by corrective pruning. While this may affect the visual appeal of the tree in the short term, lime trees are resistant and are quite able to respond to heavy pruning. Indeed, they are a tree that will tolerate pollarding.
- 3.3 To that end a complete crown reduction will be required to balance the canopy. Additionally, the cable support system will require reassessment and corrective steps taken if necessary.
- 3.4 A six-monthly inspection of the tree should follow up this work.
- 3.5 Alternatively, and given the resources required to undertake the above work, complete removal may also be considered.
- 3.6 It will be difficult to anticipate the long-term impact of the damage to the tree. With the corrective steps taken, the tree could live for many years if it is continued to be managed appropriately. It is also possible that future inspections deem the tree to have become unsafe, necessitating removal. I am of the view that this would be unlikely to occur within the next 5-10 years.

The Plan, in categorising the removal of protected trees as non-complying, does not anticipate their removal except with good reason. It is clear that the removal of the tree, would have an adverse effect on the tree, and would result in the loss of a significant landscape feature for the community. Furthermore, despite its recent pruning, I consider that the beneficial and special characteristics of the tree that made it worthy of protection in the first place still remain, and that the removal of the tree would have wide reaching community effects that are more than minor, although I do acknowledge the need for ongoing monitoring.

7.4 Summary of Environmental Effects

In my view the removal of the tree will have significant adverse effects, on the tree and surrounding environment. Furthermore, it is my view, having regard to the assessment made by Mr Cadwallader, that the tree is worthy of retention, and that it can be retained in such a way that will ensure that the physical health and safety of residents in the area will not be unduly affected. It is considered therefore, that having regard to the goals anticipated by the plan, and the current and future outlook for the health and safety of the tree, that the removal of the tree would have more than minor adverse effects.

8 RELEVANT OBJECTIVES, POLICIES, RULES AND OTHER PROVISIONS OF THE CANTERBURY REGIONAL POLICY STATEMENT [SECTION 104(1)(B)(V)]

Under section 104(1)(b)(v) of the RMA, the consent authority shall have regard to the relevant provisions of a regional policy statement. The Canterbury Regional Policy Statement (CRPS) became operative on 15 January 2013. In my view the nature and scale of the proposed activity is such that it does not impact on any matters relevant to the CRPS.

9 RELEVANT OBJECTIVES, POLICIES, RULES AND OTHER PROVISIONS OF THE ASHBURTON DISTRICT PLAN [SECTION 104(1)(B)(VI)]

The objectives and policies found in the operative Ashburton District Plan have been assessed. The District Plan acknowledges that particular trees in urban areas make a significant contribution to the character and amenity of the District and to the historic heritage values of the District.

The plan identifies protected trees as having *‘a role as heritage items and in maintaining and enhancing the environment and amenity of the district’*

The Plan goes on to state:

‘These trees merit identification and protection where they contribute to the District through aspects such as landmark significance, botanical significance or historic significance. There are many ways in which trees may be of value to people and communities and these recognise the different ways in which trees are considered to be of importance. Significant trees also play a role in various aspects of focus under the Act, including as part of natural character, natural features, indigenous vegetation or habitats (under section 6) or amenity values, ecosystems or the quality of the environment (under section 7). These trees may not however be seen by all as having significance and thus may be under threat from land development or changing land use practices. It is important to the amenity of the District as well as to community perception that trees worthy of identification be protected from adverse effects of development.’

Objective 12.2 seeks the protection of trees that contribute significantly to the Districts amenity or heritage.

Supporting policies explain the protection concept in more detail:

Policy 12.2A To identify and record trees of significance, recognising them as heritage items or an important character element in maintaining and enhancing the environment and amenity of the District.

Policy 12.2B In determining items to record, the District Council will have regard to the following factors:

- *heritage / historic value;*
- *scientific or botanic value, including rarity or representativeness;*
- *importance of position in the landscape, including landmark significance;*
- *cultural, ethnical, social, spiritual or recreational significance, including any commemorative value;*
- *age;*
- *size;*
- *form and condition;*
- *contribution to local amenity as an individual tree or as part of a stand of trees;*
- *suitability in relation to the setting or site conditions;*
- *functional value.*

In order to evaluate trees on the basis of this policy, the Ashburton District Council, at the time of plan preparation, used a commonly used template for evaluation. The working document that determined protection in this instance is included below:

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Ashburton District Council – District Plan
Heritage Tree Criteria / Evaluation System

Tree #: 69 Location: 30 Queens Drive Legal Description: Lot 42 only, Lot 42/43 DP 23494 Area / Zone: Map #: Species: Tilia x europaea Tilia tomentosa

Factors	Points: 0	2	4	6	16	32
Heritage/historic	✓			Local area/community significance or planted by well known local identities or organisations.	Early settler plantings or trees intrinsically associated with historic/heritage buildings or places or important historical events.	Trees commemorating important regional or national historic events or planted by historic identities.
Scientific/botanical	No special scientific or botanical value. Classified as noxious or surveillance plant or unwanted wilding exotic tree species.	Few good specimens of particular species in particular township or local community ✓	Rare throughout Ashburton District.	Rare in Canterbury region or significant tree group or ecological association or important seed or propagating material source.	Rare throughout New Zealand or arboretum or tree collection.	Only known specimen in New Zealand or last remnant of native trees or bush.
Importance of position in landscape	Totally obscured by trees, structures or not seen from a public place.	Small tree or tree more than 50% obscured by other trees, objects or landscape.	Roadside or park tree or tree in well frequented public place or private property.	Fine avenue or street plantings or trees growing in areas where other large trees are scarce. ✓	Principal feature of important public place or landscape design. Well known district landmark or provides 'gateway' effect to township or local community.	Landmark of national importance or trees are a vital component of a definitive landscape design.
Cultural, ethnical, social, or spiritual values or to commemorate a personal sacrifice.	No special cultural, social, ethnical or spiritual values.	Planted by unknown persons to commemorate minor event.	Planted by well known person/organisation or event of local importance.	Tree well known throughout district to be of significance. Tree represented as emblem or symbol.	Tree well known throughout Canterbury region to be of significance.	Tree well known nationally to be of significance.

Factors	Points: 0	2	4	6	16	32
Size (Crown diameter x total height) or exceptional trunk diameter.	Very small – less than 10m².	Small – 10m² to 50m².	Medium – 50m² to 150m². ✓	Large – 150m² to 250m² or largest tree in locality.	Very large 250m² or more. Very large specimen or trunk diameter exceptionally large for particular species or grove of trees.	Largest or one of largest of particular species in New Zealand.
Age	Recent planting.	5 – 50 years.	50 – 100 years. ✓	100 – 150 years.	150 years plus.	Oldest on record in New Zealand.
Form and condition	Dying, dead, diseased, unbalanced, bad structural defects or dangerous and cannot be rectified.	Poor condition or form, stable condition, no bad defects. Any hazardous and other conditions can be rectified.	Fair – reasonable form, stable condition, no bad defects.	Good form, healthy condition, making good growth or interesting character.	Exceptionally good, outstanding specimen for district and region.	One of best examples of species in New Zealand.
Suitability in relation to setting or site conditions	Totally obscures or is causing significant damage to heritage objects, buildings or any essential structure or utility.	Partially obscures a heritage object or is causing slight damage to important structures, dwellings or commercial premises that can be rectified.	Tree not obscuring or injuriously affecting any buildings, objects, structures, services or utilities. No significant negative values.	Good juxtaposition and harmony with important buildings, objects, structures and essential services or utilities.	Tree species and position specifically chosen and designed to enhance whole site or neighbourhood.	Classic and nationally recognised example of excellent landscape design with trees.
Functional value e.g. soil stabilization, noise amelioration, shelter, screening, pollution control shade tree etc.	No functional value. ✓	25% effective (state function).	50 % effective (state function).	75% effective (state function).	100% effective (state function).	Of vital public interest that function be maintained (state function).

Tree Measurements: Height: m Mean crown diameter: m Diameter breast height: mm

Tree Score: 34 points total

Inspected by:

Date inspected:

As can be seen above, the protection of the tree was determined by an arboricultural expert through a range of different criteria, which concluded that the tree was worthy of protection. I understand that the original assessment was either undertaken by Mr Walter Fielding Cotterell, or was carried out under his supervision.

Policy 12.2C To use methods and rules in the District Plan to protect identified trees from loss or destruction.

Policy 12.2D To encourage the practice of planting trees, including indigenous trees, on publicly owned and managed land and protect these trees from unnecessary interference and destruction. The Plan goes on to

explain that trees have an important ecological, environmental, landscape, heritage and cultural role. It then discussed how trees collectively endow the landscape with ‘*distinctive environmental quality and character*’.

In discussing how trees are considered worthy of protection, the Plan states:

A Protected Tree is considered to be worthy of a high level of recognition for a range of the features set out in Policy 12.2B. For example, the tree may be one that is rarely seen in cultivation or is an exceptional example of a more common species, as well as having an age that may associate it with early European settlement or an important historical event. Furthermore its size and location may make it a landmark within the District or a smaller locality. A tree may also be significant due to its association with a person of social significance. These trees are considered to merit a higher level of protection due to their significance. A set of evaluation criteria is included in Appendix 12-5 to provide information on the way in which trees are selected for inclusion within the District Plan.

The Plan then includes environmental results anticipated, the last of which refers specifically to trees:

- *The retention, within their natural life spans, of trees or groups of trees, which have significant value to the District’s residents and visitors.*

Finally in 12.6.2 the Plan contains commentary on the reasons for the rules relating to protected trees.

‘The protected trees are considered worthy of recognition because of their ecological, environmental, landscape, heritage or cultural role. The number of trees protected is only a very small proportion of the total trees in the District, but are those that stand out for their particular contribution to the environment. Protected Trees are those which possess outstanding features of botanic or scientific significance or represent historical, landmark, landscape, cultural or social values of significance, visual or cultural/historic heritage value. Removal, significant trimming or potential damage to such trees is considered to warrant special consideration by the Council as discretionary activities with a view to assessing alternative courses of action and the degree to which the protection of the tree is warranted in each circumstance. Removal of Protected Trees is a non-complying activity due to their high level of significance.’

Having regard to the objectives and policies listed above, and given the tree remains worthy of recognition, despite the damage recently caused to it, I consider the proposal to remove the tree is contrary to the objectives and policies of the Plan which seek to protect trees from being removed due to their high level of significance.

9.1 Objectives and Policies Summary

I therefore consider the proposal to remove the tree is contrary to the objectives and policies of the plan.

10 THRESHOLD TEST FOR A NON-COMPLYING ACTIVITY (SECTION 104D)

As set out in full above, section 104D of the Act directs that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or the application is for an activity that will not be contrary to the objectives and policies of the relevant plan (section 104D(1)(b)(i)).

I understand that when considering whether the adverse effects will be minor, there is no statutory authority to consider the positive effects that might accrue from the proposal. Rather it is the adverse effects, as proposed to be remedied and/or mitigated, and taken as a whole, that are to be no more than minor. Based on the assessment above, the proposal as applied for results in “more than minor” adverse on the protected tree and surrounding environment. I note that according to Mr Cadwallader, who has provided the most recent expert assessment of the tree, the tree, with remedial action and appropriate management, is expected to live for years to come. I consider that the remedial action proposed is an appropriate step at this point, and reflects the importance of the tree in the local environment.

ms clay is
not a
Arboricultural
expert
So cannot
determine
if it is
appropriate
or not

When assessing the second aspect of the threshold or gateway test, my understanding that the term contrary means that a proposal must be “not repugnant” to the relevant plan objectives and policies rather than simply not being in accordance or inconsistent with them. This is considered to be a high threshold, and in order to be considered ‘contrary’ as in ‘repugnant’ the application must demonstrate significant level of inconsistency with the policy framework. Based on that threshold, the application as applied for is considered to be contrary to the relevant objectives and policies.

On that basis I consider that the application as applied for will not meet the threshold test for a non-complying activity and therefore is not eligible for approval pursuant to section 104D of the RMA.

Notwithstanding my findings with regard to the threshold test consistent with my assessment above, the remaining statutory considerations are assessed on the basis that it may assist the Commissioner and the hearing process.

11 CONSIDERATION OF ALTERNATIVES

Schedule 4 of the RMA sets out that an AEE must include a description of any possible alternative locations or methods of undertaking the activity where it is likely the activity will result in adverse effects.

The applicant does not include any alternatives to the proposal.

12 OTHER MATTERS (SECTION 104(1)(C))

Section 104(1)(c) sets out that when considering an application for a resource consent the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

In the context of the subject application the only ‘other matter’ I consider relevant is the question of precedent and plan integrity.

12.1 Precedent and Plan Integrity

Case law that relates to the concept of precedent reflects a concern that the granting of resource consent may have planning significance beyond the immediate vicinity of the land concerned; with plan integrity more likely to affect the public confidence in the plan and its consistent administration. It is acknowledged that “precedent” is not an adverse effect on the environment. However, these are considered to be matters that can be considered under section 104(1)(c) of the RMA, with the appropriate weight to be given to them being dependent on the circumstances of the particular application.

In order to avoid precedent and subsequent effects on the integrity of the District Plan, a proposal for a non-complying activity as proposed would need to establish unusual qualities that might distinguish it from other applications.

incorrect, that is council
opinion not fact.

In my view, the only unusual quality that might distinguish this application from others, is the fact that the applicant has already attempted to physically remove the tree, and was only limited in that attempt by enforcement action taken by the Council. A situation whereby the attempted, albeit aborted, removal of a tree makes a later application for removal easier through damage incurred, would have a significant detrimental impact on the public confidence in the Plan and would in my view result in a precedent effect. Furthermore, by their nature, significant or protected trees are commonly supported by external structures, and this fact does not lessen the importance of the tree or its appropriateness for protection. Indeed, around the world, many significant large trees are supported with cables or props and are considered no less worthy of protection.



An example of a supported tree that remains worthy of protection – Sherwood Forest's 'Major Oak', Nottinghamshire.

Hardly relevant in this
situation

13 CONCLUSION & RECOMMENDATION

As discussed above, it is my view, based on the expert opinion of Mr Cadwallader, that the tree in question remains worthy of protection, and that the health and safety effects of the tree as described by the applicant and submitters, are not of a level to which removal would become necessary. I do consider that the alternative to removal, being the remedial treatment proposed by Mr Cadwallader, is appropriate given the importance of the tree in its environment, and that any health and safety effects can be appropriately mitigated through these actions. Given the proposal is contrary to the objectives and policies of the District Plan, and has effects that are more than minor, the application to remove the tree should be declined, and remedial action be carried out.

Report prepared by:

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Mary Clay

Consultant Planner (Avanzar Consulting Ltd) on behalf of the Ashburton District Council

Date: 26 August 2021