

TO: Hearings Committee

FROM: Finn Campbell, Graduate Planner

DATE: 18 July 2025

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2024-460
33 Preston Crescent
A & A O'Byrne.

INTRODUCTION

- [1] This addendum has been prepared on the basis of information available on 18 July 2025. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.
- [2] The hearings panel issued a minute requesting additional information on 18 June 2025. The applicant returned a response to that minute on 4 July 2025. This addendum reviews the applicant's returned information.

SUMMARY OF RECOMMENDATION

- [3] I accept the response to the minute contains information, discussion, and evidence produced by suitably qualified persons that affirm a position that there are unlikely to be satisfactory alternatives to the proposed drainage works that allows the tree and the dwelling to co-exist. This position is supported by suitably qualified council experts who reviewed the response to the minute. On that basis I consider that this application could not be mistaken for an application to remove a scheduled tree where there are reasonable alternatives which could preserve the tree and the dwelling. Therefore, I do not believe the integrity of the 2GP could be undermined if consent to remove the tree is granted.
- [4] This addendum has relied on the expertise of Mr Mike Brown, Mr Michael Smaill, Mr Ray Larsorsa, Mr Robert Aurik, Mr Mark Roberts; and the new evidence was reviewed by Council Building Inspector Joe Fitzsimmons and Council Drainage Officer Andrew Roberts. Council Landscape Architect Mr McKinley provided no additional assessment.
- [5] Therefore, I consider it appropriate to reconsider my position on the application and the discussion points contained in the s 42A report (agenda [139-154]).

REASONS FOR RECOMMENDATION

Response to brief of evidence from Will Hagendorn.

- [6] I accept this response and consider it consistent with the advice received. The proposed drainage solutions are uncontested in their impact on the health of the tree.

Response to brief of evidence from Michael Smaill.

- [7] I accept this response and consider that the discussion includes supporting discussion which assists with determining an appropriate recommendation. That position is supported by further advice from Council staff.
- [8] I requested a review of the additional information by a suitably qualified council drainage expert, Andrew Roberts, who reviewed the new information. His position is that Mr Smaill is suitably qualified and whose reputation is held in high regard within the Council Building Services Team. He could not see any reasons that Mr Smaill's advice "*wouldn't be considered in this situation*".
- [9] I requested a review of the additional information by a suitably qualified arborist, Mark Roberts, who reviewed the evidence. I sought particular clarification on the status of a trenchless method as raised by Mr Smaill, but who acknowledged a lack of suitable qualifications to assess any potential impact upon the tree. Mr Mark Roberts assists that discussion point with the following statement:

"As requested; looking at the July 4 BOE from Mike Smaill, specifically his response to question 6 ("Could you please identify any other methods which could resolve the drainage issues... ") and his comments around Trenchless Method (answers 10-13).

Mr Smaill notes [11] that a trenchless method "would have the potential to address drainage concerns while minimising damage to tree roots", but [13] "Unfortunately, we cannot be certain whether the drilling will have a fatal impact on the tree. For that reason, it is not clear whether this method would be viable".

Your questions to me were:

Are you able to provide arboricultural advice based on this level of detail?

No, I cannot provide informed comment with the level of detail provided. I have been involved with several Trenchless / directional drilling jobs where contact with tree roots has been avoided. For this to be able to happen the path of the drill has been below where the mass of the roots are expected to be (typically 1.5m or more below the surface). To achieve this (to get the angles) the starting point has been well outside the rooting area, the drill is driven under the tree and ends in a collecting pit.

To be able to answer your question, I would need to know the drill depth of the proposed path of the drill.

On the face of it, it could be an option, but I don't think it's as simple as that. To get a consistent fall that passes at least 1.5m under the tree and connects with the stormwater system, it is unlikely (sic) to be a straight line from the sump, under the tree, and out to the street. I'm guessing that drilling will need start downhill somewhere outside number 23 Preston Cres then push through and under number

27 before connecting with a sump at number 33. The path of the drill will need to avoid contacting any other underground service, and the depth of the sump would probably need to (sic) increased to accommodate. Somebody would need to confirm that it's possible to drill from A to B, and the Council would need to agree that it's acceptable do so.

And in response to your second question

If yes, can you advise if this trenchless methodology is an alternative approach that would be maintain the long term health of the tree?

If it's possible and permissible, a drainpipe installed at least 1.5m under the ground that passes under the roots of the tree, this approach should not negatively impact the longterm health of the tree. If it were a PVC type pipe and the joins are fussed (sic) together the roots are unlikely to be able to get into the pipe and cause a blockage."

[10] I sought clarification on the above statement by Mr Mark Roberts', asking:

"Can a trenchless method traverse through/into the SRZ and still ensure the health of the tree or root system?"

To which, Mr Mark Roberts provided the following clarification:

"according to the standards (the Australian AS 4970 and the British BS 3998) no works can take place inside the Structural Root Zone (SRZ). So no, a trenchless method cannot traverse through/into the SRZ and still ensure the health of the tree or root system. The standards are pretty cut and dry when it comes to that, and I would not recommend to go against the standards."

[11] I accept this position and conclude that, where a trenchless method is considered to be a viable alternative, it would be a situation where the trenchless method avoids the root system entirely, rather than which minimises penetration through the SRZ.

[12] I can agree with the advice from Mr Smaill that this likely wouldn't be a viable alternative. This is on the basis that the proposed drainage solution may have to start within the SRZ; and, in order to achieve an avoidance of the SRZ, the trenchless method may have an inlet and outlet outside the subject area and need to achieve depths of up to 1.5m to avoid the SRZ. Consequently, a trenchless method appears to be a method that could be used when avoiding the SRZ rather than allowing for drainage through the SRZ.

[13] This position is taken on the assumption that a drainage solution cannot easily be started outside the SRZ and still satisfactorily drain the flooding area within the SRZ, whilst also avoiding any penetrations/excavations within the SRZ.

Response to the brief of evidence from Adam O'Byrne.

[14] I accept the detail provided by Mike Brown on the consideration of alternatives and consider them brief, but the opinion of a suitably qualified person. I accept the detail that relying on the neighbouring property for an unnatural discharge is not preferred. I note there may be a situation whereby this could be part of a solution, but that it relies on permissions (land owners) and legal processes (easements/drainage rights) to guarantee it as an alternate solution for part of the overland flow. This is part of the basis for it not being preferred, the other part being that uphill attenuation around the slope near the

tree also would require excavations through the SRZ. Affirmed by the evidence from Mr Smaill. Excavations in the SRZ are not supported by the council arborist Mr Roberts.

- [15] I could not determine the reasons why armouring could be disregarded as a viable solution and sought clarification from Council Building Inspector Joe Fitzsimmons. Mr Fitzsimmons position was that: *"Armouring as a solution could be extremely complex as the cladding of the building is brick. This solution would require engineering/design and a building consent. A solution of this type would outweigh [sic] the gain and would most likely be cost prohibitive."* I sought clarification as to whether armouring would rely on excavations in order to be achieved. Joe Fitzsimmons advised that: *"Depending on the design this is most likely to be part of a solution."* On that basis I consider that armouring does not appear to be a viable solution and it has a high likelihood requiring excavations in the SRZ.
- [16] I accept the detail provided by Rhys Lasorsa as being a description of the site situation by an insurance assessor who is suitably qualified in the matters of insurance risk calculation and risk management, and that the statement provided is a clarification of a position taken by an insurance company who would consider the risks of the site when providing insurance. I consider the follow up from Rhys Lasorsa to be helpful in clarifying the original statements provided, but this information does not change my position on the recommendation of the application, as it is consistent with the original evidence which I accepted and have given weight to. It is accepted that insurance companies seek to manage risk and have a position that a known risk to the dwelling on the site should be managed – as a general principle. How they assess these risk factors may have regard to RMA considerations but is not limited to a planning lens.
- [17] I accept that prior to the preparation of the Section 42A report, that based upon the technical evidence available to me at that time, I gave an indication to the applicant that the information needed to consider the application appeared to be complete and satisfactory. That was the basis for this application proceeding to notification.
- [18] I had received an indication of how to consider the application from Mark Roberts from an arboricultural perspective and I had passed along that indication in my advice to Mr O'Byrne as to whether the application hearing process could proceed. In further working through my recommendation, I came to realise that the consideration of alternatives had not been sufficiently explored or ruled out. As a consequence, I did not have the confidence to advise a determinative recommendation to the hearings panel.
- [19] I subsequently sought clarification from Mr Brown, and the summary of that conversation is found in my hearing report [paragraph 98]. Mr Brown indicated that a pump was not a satisfactory solution and that a drain and sump is the preferred solution. He provided some reasoning that described the preferred solution and the unpreferred alternative solution. No other matters or considerations of alternatives were raised or discussed.
- [20] During the preparation for the hearing, I made a request to Adam O'Byrne to have a suitably qualified drainage person inspect the site and familiarise themselves with the it, in order to be able to respond to questions about any potential alternate drainage solutions. However, I accept that any expertise and evidence should be provided in a manner that enables all parties a reasonable opportunity for review and response to any assessment, deliberations, advice, or conclusions.
- [21] I consider that I was appropriate in signalling to the hearings panel at the hearing that the application should take into account the consideration of alternatives. The Section 42A assessment had been prepared based upon evidence available following the submission period. In the lead up to the hearing as the report was finalised and subsequently at the

hearing, it had become apparent that further evidence was necessary to be able to consider the application. My recommendation reflected this fact. I believe the consideration of alternatives is a crucial element to informing a decision and that accepting the proposed solution was not appropriate when it could potentially undermine the integrity of the 2GP. Otherwise, the undesirable precedent could be that: a standard drainage solution justifies a trees removal in a situation where there are readily available alternatives that can preserve both the tree and the building.

RESPONSE TO THE BRIEF OF EVIDENCE BY ROBERT AURIK.

- [22] I accept this response and consider that the discussion includes supporting discussion which clarifies the relationship between the tree, the building, and the building code. That position is supported by further advice from Council staff.
- [23] I accept the evidence provided as suitable and substantiated by an appropriately qualified person. This position is supported by Joe Fitzsimmons, a qualified council building inspector.
- [24] I accept the clarification regarding the insurance report and consider that it is uncontested that Mr Lasorsa and Mr Aurik both agree that preventative works can reduce the risk upon the building.
- [25] I consider the advice affirms my original position that there is at least a moderate risk to the building from flooding.

SUMMARY OF ALTERNATIVES

- [26] Any alternative drainage solution which requires ground excavation in or through the SRZ is not supported.
- [27] No alternative drainage solution was proposed that could sufficiently avoid ground excavations and provide an effective drainage solution.
- [28] The discussed drainage methodologies were:
- Trenchless.
 - Armouring.
 - Cut-off drains.
- [29] These proposed solutions all invariably require excavations within the SRZ in order to be effective solutions, and on that basis, they have not been found to be satisfactory to the question: *“does a drainage solution exist which allows for the tree and the dwelling to be retained”*?

CONCLUSION

- [30] Having regard to the above assessment, I recommend that the application be granted subject to the advised conditions recommended in the s42a report.

REASONS FOR RECOMMENDATION

- [31] I consider that the likely adverse effects of the proposed activity will be moderate or more than minor at a local level, particularly in terms of amenity value.

- [32] I consider that the proposed drainage works will compromise the roots within the SRZ of T014 and that there is no alternative which could maintain the building and the tree.
- [33] All discussed solutions invariably require excavations within the SRZ which is incompatible with the health of T014 as prescribed by the tree standards (Australian AS 4970 and the British BS 3998).
- [34] I consider that the ancillary residential unit is lawfully established and occupied but its occupation has induced a demand to remove the tree.
- [35] I consider that the proposal is not contrary with the overall objective and the relative policies of the Partially Operative 2GP.
- [36] I consider that supporting evidence has resolved the “true exception” test and I am comfortable considering that the integrity of the Partially Operative 2GP will not be undermined.
- [37] Overall, I consider that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991, which is to promote the sustainable management of natural and physical resources.

Addendum prepared by:



Finn Campbell
Graduate Planner

18 July 2025
Date