

1 March 2023

Clifford Ashley Muir and Kaye Louise Muir
64 Passmore Crescent
Dunedin
9010

Via email: ash.kaye.muir@gmail.com

Dear Ashley and Kaye Muir

RESOURCE CONSENT APPLICATION:

**LUC-2022-337
64 PASSMORE CRESCENT
DUNEDIN**

The above application for an extension to an existing attached garage at 64 Passmore Crescent, Dunedin was processed on a limited notified basis in accordance with section 95 of the Resource Management Act 1991. I was appointed by the Dunedin City Council (DCC) as an Independent Commissioner to hear and make a decision on the application. I heard and considered the application at a hearing on Wednesday, 15 February 2023. I undertook a site visit on Wednesday, 15 February 2023.

At the end of the public part of the hearing, I, in accordance with section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

I have resolved to **grant** consent to the application on 1 March 2023. A Decision Report, including reasons for the Decision, follows.

The Hearing and Appearances

The applicant was represented by:

Mr Philip Page, Legal Counsel for the applicant, and Mr Muir. Mrs Muir also attended the hearing.

Council staff attending were:

Campbell Thomson (Advisor to the Commissioner), Nicola Petrie (Processing Planner) and Wendy Collard (Governance Support Officer).

The submitter did not attend the hearing. However, I note that I received his written statement and information in support of his submission was prior to the hearing date, and this information was circulated to the parties present.

Procedural Issues

No procedural issues were raised. However, Mr Page stated that the matters arising with respect to the works affecting the health of a tree on a neighbouring property are not a matter to be considered in a Resource Management Act 1991 deliberation. Mr Page stated that the legal position is that a landowner is entitled to use their land unencumbered by tree roots that might be growing across the boundary from a neighbouring property.

Principal Issues of Contention

The principal issue of contention is as follows:

- The impact of the proposed garage extension upon the residential amenity of the neighbouring property at 64A Passmore Crescent.

Summary of Evidence

Introduction from Processing Planner

The Processing Planner (Nicola Petrie) gave a brief overview of the proposal and her recommendation. Ms Petrie advised that consent was being sought for a single storey garage extension which encroached the front yard and side yard boundary setbacks that apply at the subject site. Ms Petrie clarified that the application had been amended since it was lodged, with an updated plan submitted to Council on 9 December 2022. The amended proposal reduced the side yard setback encroachment, with the extension now a minimum of 500mm from the boundary.

Ms Petrie advised that she had reconsidered Condition 3 in her recommended consent conditions, and no longer considered that this condition was necessary. Condition 3 sought to ensure that soil disturbance associated with the proposal be confined as much as possible to the proposed building footprint to minimise the risk of damage to the health of the root systems of the adjacent hedge and tree at 64A Passmore Crescent. It had been proposed as one means to address concerns of the submitter.

In response to questions, Ms Petrie clarified that the permitted activity rule (Rule 15.6.13.1.a.viii.4) that allows garages to encroach the 2m side yard setback (to be up to 1m from a boundary) did not apply to this application due to the proposed height of the extension structure.

Ms Petrie confirmed that her recommendation within her section 42A report was to grant consent to the proposal.

The Applicant's Case

Counsel for the applicant, Mr Page, spoke to his tabled legal submissions. In his submissions Mr Page clearly set out the matters to which the consent authority's discretion was limited for this decision, which are: (a) effects on surrounding sites' residential amenity, and (b) effects on neighbourhood residential character and amenity.

Mr Page also stated that he did not consider that recommended Condition 3 was appropriate, as this condition does not avoid, remedy or mitigate the environmental effects associated with the limited matters of discretion that apply to the consideration of this subject application.

Mr Muir, as applicant, spoke to his tabled, pre-circulated statement. Mr Muir, who is a qualified architect, described why the addition to the garage was required, and the different options that had been considered before arriving at the proposed garage extension design. Mr Muir described how discussions with neighbouring property owner Mr Treharne had resulted in a reduction in the scale of the proposed extension.

Mr Muir expressed his intention to retain the hedge, and for the Ash tree to be unimpacted by the proposal. Mr Muir discussed the planting between the proposed extension site and the road and stated that his preference was for this planting to be retained. He advised that it was not so dense so as to prevent access through and along the side boundary of 64 Passmore Crescent for maintenance reasons.

In response to questioning, Mr Muir advised that the graphic he had produced that showed a fence along the boundary between 64 and 64A Passmore Crescent was intended to visually illustrate a permitted fence as a comparison tool, when considering the effects of the proposed extension on the neighbourhood's residential character and amenity. Mr Muir confirmed that the fence is not part of the proposal.

Processing Planner's Review of Recommendation

Ms Petrie maintained her recommendation that consent be granted.

Applicants Right of Reply

Mr Page reiterated that he did not consider that recommended Condition 3 was an appropriate condition due to the matters of discretion applicable to this resource consent application.

Statutory and Other Provisions

In accordance with section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the Operative Dunedin City District Plan ("Operative District Plan"): Chapter 4 Sustainability and Chapter 8 Residential Zones, and the following chapters of the Proposed Second Generation Dunedin City District Plan ("Proposed 2GP"): Chapter 2 Sustainability and Chapter 15 Residential.

Given the localised nature of the activities, regard was not given to the Partially Operative and the Proposed Regional Policy Statements for Otago.

Main Findings on Principal Issues of Contention

I have considered the evidence heard, the relevant statutory and plan provisions, and the principal issue in contention. The main findings on the principal issue have been incorporated within the reasons for this decision, discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, as well as the information provided by the submitter Mr Treharne, which was circulated prior to the hearing, was held during the public-excluded portion of the hearing. I reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken after the hearing, during which I inspected the site and the existing environment.

*That pursuant to section 34A(1) and 104C and after having regard to section 104 of the Resource Management Act 1991, and the provisions of the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **restricted discretionary activity** being the extension of the existing garage on the site at 64 Passmore Crescent, Dunedin legally described as Lot 2 DP 4509 (Record of Title OT272/230), subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision

My main findings on the principal issue of contention are set out below. My findings take into account the matters of discretion to which this decision is limited.

1. The consideration of this application for a boundary setback breach must be limited to the following assessment matters set out in Rule 15.10.4.1 of the Proposed 2GP:

(a) private effects on neighbours' residential amenity; and

(b) public effects on neighbourhood residential character and amenity.

and

Rule 15.10.4.2

(a) Effects on health and safety

The health and safety consideration under Rule 15.10.4.2 is only in relation to visibility of vehicles, cyclists and pedestrians in regard to use of a garage or carport for vehicles, to the extent that the garage extension is located within the front yard setback. This is made clear in the related provision of Rule 6.10.3.2.

2. I consider the primary issue of contention is the actual or potential adverse environmental effects of the garage extension on the private residential amenity of 64A Passmore Crescent. The owner and occupier of 64A Passmore Crescent lodged a submission opposing the application, and, subsequent to the original submission, has provided additional information to the Council to support this opposition. This information included an email from an arborist, Mr Joel Gibson (dated 6 February 2023), which discusses the health of the Ash tree at 64A Passmore Crescent, and a written statement prepared by Mr Treharne, dated 7 February 2023. Mr Treharne has raised several concerns with the application. However, only one matter raised by Mr Treharne may be relevant to the consideration of this activity as part of this decision, and this is the concern about the impact of the proposed building extension on the hedge and Ash tree, and then only to the extent that this impact affects the residential amenity of 64A Passmore Crescent.
3. The existing hedge demarcates the boundary shared by the applicant and Mr Treharne, and the Ash tree is located on Mr Treharne's property, although the canopy spans the boundary. The hedge and Ash tree are located immediately adjacent to the proposed extension, and are located beside a car parking space and a pathway leading down to the dwelling at 64A Passmore Crescent. The hedge and tree do not contribute to the residential amenity of 64A Passmore Crescent insofar as they are not part of an outdoor living space. The guidance on the assessment matter in Rule 15.10.4.1(a) is directed towards the impact of buildings and structures on residential buildings and adjacent outdoor living areas. The definition of outdoor living space in the Proposed 2GP excludes any area used for parking and/or driveways. The site for the proposed extension is not located where it would adversely affect the sunlight access of the dwelling or any outdoor living spaces at 64A Passmore Crescent. I therefore agree with the opinion of Ms Petrie that the proposal will not adversely affect the residential dwelling nor the outdoor living space of the submitters' property. I do not consider that the activity will result in adverse effects on the residential amenity values of 64A Passmore Crescent that are minor or more.
4. Relying on the opinion of Ms Callau, the Council Urban Designer, I also consider that, due to the scale and design of the proposed extension, which complements the existing garage, and with the

retention of planting between the extension and the road, the effects of the activity on the neighbourhood residential character and amenity will be no more than minor. Conditions are imposed to require planting to be retained between the extension and Passmore Crescent.

5. Given the location and scale of the extension to the garage and the absence of any change to the existing vehicle access, there are no health and safety issues (in terms of Rule 15.10.4.2) that are relevant for this proposal.
6. Overall, I find that the adverse effects of the proposal are likely to be no more than minor.
7. Turning to the consideration of the relevant objectives and policies of the Operative District Plan and the Proposed 2GP, I accept the analysis of the objectives and policies of the Operative District Plan and the Proposed District Plan set out in the Section 42A report, which concluded that the proposal was generally consistent with the Operative District Plan and Proposed 2GP provisions. In particular, Policy 15.2.3.1 requires buildings to be of a height and setback from boundaries that ensures that there are no more than minor effects on sunlight access of current and future residential buildings and their outdoor living areas. I find the proposal is consistent with this policy with respect to the actual and potential effects on current and future residential buildings and outdoor living spaces of 64A Passmore Crescent.
8. I have concluded that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Right of Appeal

In accordance with section 120 of the Resource Management Act 1991, the applicant and/or the submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received.

The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Commencement of Consent

As stated in section 116 of the Resource Management Act 1991, this consent will only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

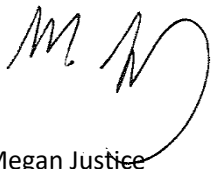
Monitoring

Section 35(2)(d) of the Resource Management Act 1991 requires every council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the nature of your intended works/activity, this consent will require one annual inspection.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspection will be included in the invoice for your application.

It should be noted that if additional inspections are required, beyond those scheduled at the time the consent is issued, then there is the ability to apply additional charges to cover the costs of these extra inspections. Often you can reduce the need for additional inspections by complying with the conditions of consent in a timely manner and by ensuring on-going compliance with those conditions. Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Megan Justice', with a large, sweeping flourish at the end.

Megan Justice
Hearings Commissioner



Consent Type: Land Use Consent

Consent Number: LUC-2022-337

Purpose: The extension of the existing garage.

Location of Activity: 64 Passmore Crescent, Dunedin.

Legal Description: Lot 2 DP 4509 (Record of Title OT272/230).

Lapse Date: 1 March 2028, unless the consent has been given effect to before this date.

Conditions

- The proposed activity must be undertaken in general accordance with the approved plans attached to this certificate as Appendix One, and the information provided with the resource consent application received by the Council on 15 August 2022, as amended by the revised plans received on 9 December 2022, except where modified by the following conditions.*
- Landscape planting located in the western corner of the site (between the proposed extension and Passmore Crescent boundary), and within the area between the extension and the side boundary shared with 64A Passmore Crescent, must be maintained.*

Advice Notes

Boundary Proximity

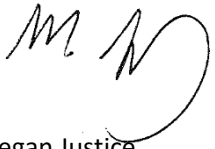
- The entire building including roof eaves and guttering (and associated drainage) must be contained within the property boundaries. As the proposed building is to be extended close to the side boundary (no closer than 500mm from the side yard boundary), care should be taken by the consent holder to accurately identify the position of this boundary prior to building construction. Confirmation by a licensed cadastral surveyor may be required.

General

- In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.

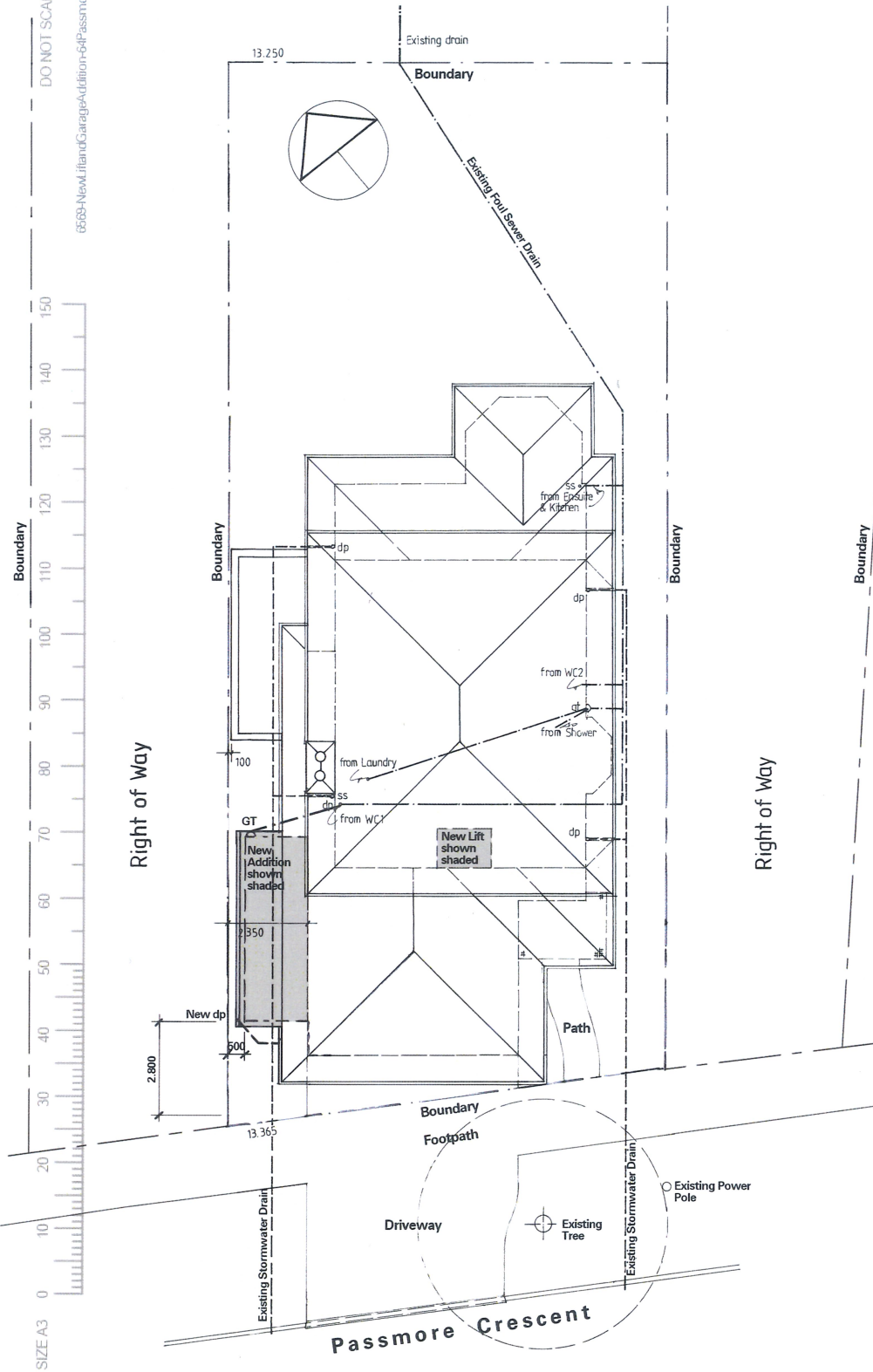
5. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
6. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.

Issued at Dunedin on 1 March 2023

A handwritten signature in black ink, consisting of a stylized 'M' followed by a large, sweeping loop.

Megan Justice
Chair
Hearings Committee

Appendix One: Approved Plan/s for LUC-2022-337 (scanned image/s, not to scale)



Legal Description
Lot 2, D.P. 4509, Part Sec 7, Block II
Upper Kaikorai District

Site Coverage - 39.9%

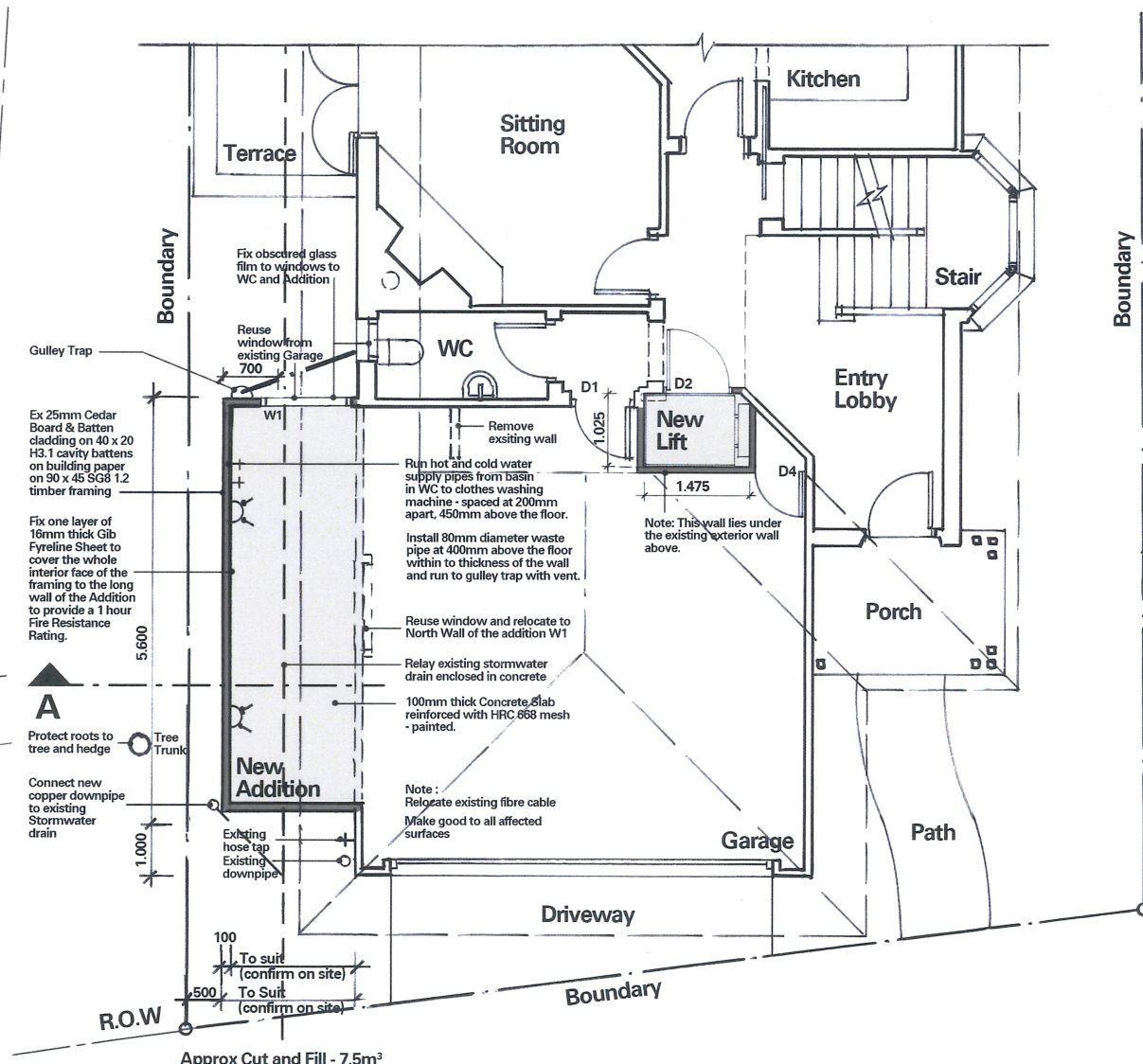
Site Plan
Scale 1:200 at A3, 1:100 at A1



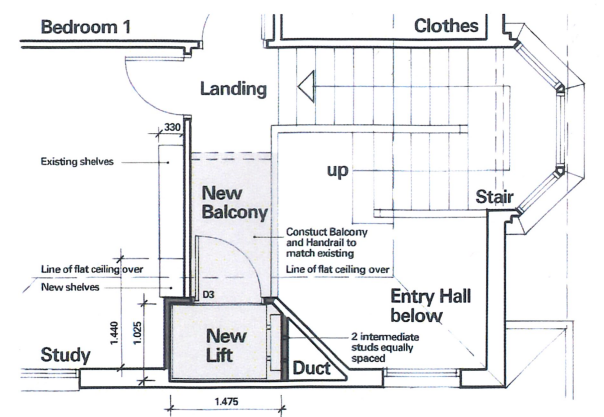
North Elevation
Elevations
Scale 1:200 at A3, 1:100 at A1

West Elevation

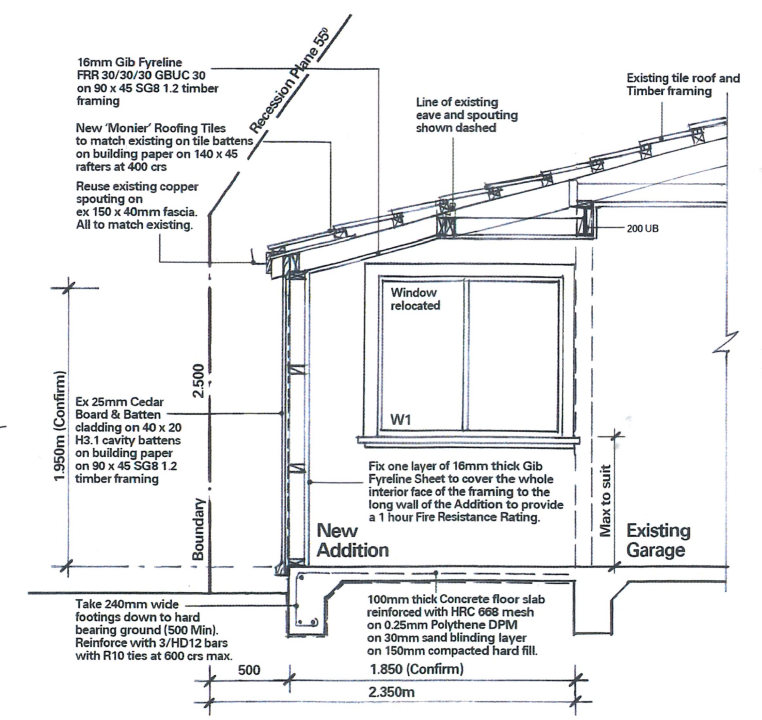
South Elevation



Part First Floor Plan
Scale 1:100 at A3, 1:50 at A1



Part Ground Floor Plan
Scale 1:100 at A3, 1:50 at A1



Cross Section A
Scale 1:100 at A3, 1:50 at A1