

Statement on the resource consent application LUC-2022-337
RE: Effects on 64a Passmore Crescent, Dunedin 9010
of the proposed addition to 64 Passmore Crescent, Dunedin 9010
Date of statement: 7 Feb 2023

This document provides a further statement in support of our submission objecting to parts of the limited notified application LUC-2022-337 referring to 64 Passmore Crescent. Our preference continues to be for all correspondence to be in writing to the shared email address for 64a Passmore Crescent.

We, the current owners of 64a Passmore Crescent, continue to oppose the parts of this application that refer to a proposed extension to the existing double garage at 64 Passmore Crescent close to our boundary. We conclude this statement with a series of requests for enhanced specificity of the draft conditions should the application be granted in full or in part, although we request that the application to be declined as it stands, or for the side set-back be increased to 800m as a compromise. We ask for a full and detailed response to each of the requests outlined later in this statement. We also note some factual errors in the current plans that must be corrected.

The points outlined in this statement refer to matters raised in the application first lodged on 15 Aug 2022 and subsequent revisions to the application status and associated plans. In preparing this statement we have sought advice from a planner independent of the Dunedin City Council, and we have provided expert evidence from a qualified arborist.

This statement is in support of our formal written submission of 30 Nov 2022 made in response to the original notification of the limited notified application that was sent to us by post and dated 2 Nov 2022. We note that the limited notified application was made after we had raised concerns about the impact of the proposed plans for an extension to the existing double garage at 64 Passmore Crescent. We outlined these concerns to the owners by email and to the assigned planner at the Dunedin City Council, who had contacted us about the status of the application when the initial application was lodged without affected party approval from us. We note that no formal evidence has been provided by the applicants subsequent to the most recent version of the plans in December 2022 within the required timeframe prior to decision making.

We note that our concerns expressed in this statement would also extend to any future owners of 64 Passmore Crescent if the application were to be approved because the issue of constrained access would continue in perpetuity. Likewise, we note that our concerns would continue to have impact in perpetuity for future owners of 64a Passmore Crescent. We also emphasise our right to have trespassers removed from our property at 64a Passmore Crescent through Police action where required as per the Trespass Act 1980.

1. The current proposal and our ongoing concerns

We note from an email from sent by the Dunedin City Council on 12 Dec 2022 that the most recent version of plans for the extension at 64 Passmore Crescent (dated 8 Dec 2022) now indicate a side set-back of 500mm as opposed to the original proposal for a side set-back of 300mm. This change to the proposal was not made in consultation with us, the owners of 64a Passmore Crescent, and we remain concerned about the impact on our property if the approval were to be granted as it stands. These concerns primarily relate to **three** issues that we have previously raised. We contend that these issues are not given appropriate weight in the planner's report and have not been overcome by the increase in the proposed set-back or other minor changes to the proposal.

1.1. Concern 1: Constrained access to parts of 64 Passmore Crescent that would be created

The proposed side set-back of 500mm does not overcome our concerns that the proposed extension would create constrained access to an isolated section of 64 Passmore Crescent between the existing terrace and the proposed extension to the double garage if the approval were to be granted.

This concern relates in particular to the branches of the ash tree on our property at 64a Passmore Crescent that protrude into 64 Passmore Crescent. The current owners of 64 Passmore Crescent have most recently stated in the officially provided documentation that they too wish for the tree to be kept and that they believe the proposed extension to their existing double garage can be achieved without removing any branches of the tree. We welcome this goal of leaving all branches of the tree intact, and we expand on this in the below section outlining unresolved issues regarding the health of the tree. However, if the protruding branches of the tree are kept, we contend that it will not be possible to pass safely between the existing tree and the proposed extension.

We continue to be concerned that the proposed set-back of 500mm is insufficient to allow regular ongoing access to the area of 64 Passmore Crescent that would lie between the existing terrace and the proposed extension to the double garage if the approval were to be granted. The owners of 64 Passmore Crescent have presented no evidence such as detailed surveying of the land and tree confirming that a gap of 500mm (or likely less due to the presence of branches of the tree) is sufficient to access the area that would have constrained access.

We are also concerned that the resulting spatial arrangement would be a health and safety hazard for any contractors accessing parts of the property at 64 Passmore Crescent via the narrow area between the proposed extension and the ash tree on the boundary because it would create a hazardous entryway with a substantial low branch (as indicated in the recent photographs of the tree in question provided as part of the most recent plans submitted by the owners of 64 Passmore Crescent in December 2022). We are concerned that there would be liability under the Health and Safety at Work Act 2015 and that this liability may fall to the owners of 64 Passmore Crescent (the land where the hazard would occur), the owners of 64a Passmore Crescent (the owners of the tree that would become part of the hazard if this application is approved), or the Dunedin City Council as the approvers of the plans leading to the hazard. We seek to understand and mitigate this potential hazard.

We are particularly concerned about the area of 64 Passmore Crescent that would have constrained access because the proposed extension would be built over an existing storm drain noted on the plans, and a large drainage duct is contained in the area that would have constrained access. We also note that the area in question is sunken and creates an area where pooling of water appears likely. We note that the owners have provided no evidence confirming the functioning of drainage in the area.

We reiterate our objections to any contractor being tasked with entering our property at 64a Passmore Crescent in order to access, for example, the guttering of the proposed extension for routine maintenance, or for routine or emergency access to the drainage duct in the area that would have constrained access. Based on the provided plans, the drainage duct appears to be a fundamental feature of drainage protecting the subterranean levels of the property at 64 Passmore Crescent, and we are concerned that their house would suffer extensive damage if the drainage could not be accessed during any emergency situations such as flash flooding or a drain blockage.

We are also concerned that any drainage issues at 64 Passmore Crescent relating to or exacerbated by the proposed building could cause material damage to our property such as the pathway, which is our only accessway to our house at 64a Passmore Crescent. Our concern is that we could become liable for some or all costs of repairs crossing both properties or any material damage to our property if the application is granted as it stands and drain issues arise.

1.2. Concern 2: Impact of the proposed building on our hedge and tree

We also remain concerned that the proposed side set-back of 500mm for the proposed extension to the existing double garage at 64 Passmore Crescent would lead to the death of the ash tree and hedge that sit just onto our side of the boundary in question.

We note that our ash tree is not a Scheduled Tree under the Dunedin City Second Generation District plan (2GP) so it can be legally trimmed without special permission but not without being mindful of the impact of any trimming. The proposed plans acknowledge, in line with our understanding, that the base of the ash tree sits entirely within the property of 64a Passmore Crescent, with the exception of an extensive root system that extends over the boundary into 64 Passmore Crescent.

We have provided evidence from a qualified arborist who notes that the ash tree is already in poor health. This is further indicated in the diagrams provided as part of the application by the owners of 64 Passmore Crescent who recently took photographs of the tree in preparing their plans. In these photographs, the die-back of the tree can be seen extending throughout the branches.

The arborist further indicates that proposal to build a concrete foundation 500mm from the base of the tree would risk it dying given its weakened state of health. The arborist also notes that removal of any branches of the tree, should that be deemed necessary by the owners of 64 Passmore Crescent is likely to seriously affect the health of the tree.

We understand that the owners of any property have the right to trim branches and also roots of trees near a boundary that protrude over the boundary of their property (with the exception of Scheduled Trees). However, we also understand that any such remediation of any tree by a neighbour must not be to the extent that the height of the tree is reduced or the tree dies otherwise it becomes wilful damage under the Summary Offences Act 1981.

We are concerned that our ash tree will die if the proposed construction goes ahead. This outcome can be avoided by not building in such close proximity to the tree. The owners of 64 Passmore Crescent have not provided any evidence indicating that the health of the tree can be maintained throughout the proposed building work. We appreciate the note in the plans that builders would be instructed to attempt to not disturb the roots during construction, but no evidence has been provided to indicate that this is feasible given the extent of proposed building.

We are also concerned that if the ash tree is retained as per the wishes of the current owners of 64 Passmore Crescent that the root system could continue to grow and may damage the foundations of the proposed extension, and the branches could damage the roof at 64 Passmore Crescent, particularly if the tree dies. If the application is approved and the owners of 64 Passmore Crescent proceed with the extension then it may become necessary to have the tree removed entirely so as to avoid any such damage and any potential liability.

1.3. Concern 3: The proposed extension is independent of the requirement for a lift

We also note that the proposed extension to the current double garage is an independent issue to the proposed installation of a lift. We understand that the proposed lift could be installed at any point without need for our consent if the owners of 64 Passmore Crescent have the required building consents.

We emphasise that we are not opposing the installation of a lift. However, we note that the need for a lift is independent of the need for additional garage space in the application as presented. The lift would not be housed in the proposed extension to the existing double garage.

We have previously made suggestions for other solutions if the owners of 64 Passmore Crescent continue to desire more internal space to offset the addition of a lift. We note that these alternative solutions remain viable and include 1) parking only one car in the double garage in order to be able to make more use of the existing space garage space or 2) building an extension on the other side of the garage.

If the resource consent application is read with the confounding issue of the lift excluded, the only purpose of the proposed extension is to gain more internal space, and this in itself does not provide any essential benefit to the owners of 64 Passmore Crescent because a lift could be installed regardless. We thus contend that this lack of essential benefit does not offset the concerns we have raised in relation to the contravention of the 1m side set-back.

2. The addition of fencing to the proposed plans

We welcome the addition of a fence on the boundary between 64 Passmore Crescent and our property at 64a Passmore Crescent at the site in question. We approve of the design submitted in the most recent version of the proposal and plans provided in December 2022. We have not received an official Fencing Notice from the current owners of 64 Passmore Crescent as of the date of submitting this statement, but if requested we would give our approval for them to arrange for the fence to be built immediately.

3. Summary of our requests

3.1. Primary request: for the application to be rejected

Our primary request is that the aspects of the limited notified application relating to the extension to the existing double garage at 64 Passmore Crescent be rejected outright based on the above concerns.

3.2. Requests if a side set-back of 500mm is approved despite our concerns

If the decision is to approve the application with a side set-back of 500mm despite our concerns, we request that the following **seven** clarifications or additions be made to the draft conditions in Appendix 4 (provided to us on 24 Jan 2022). We make these requests in the spirit of ensuring clarity for all parties, and proposed changes or additions are bolded.

3.2.1. Inclusion of a fence as per the plans dated 8 Dec 2022

Point 1. of the proposed draft conditions states that approval would refer to “the revised plans received on 9 Dec 2022”. If these plans are approved, we request a clarification to this point stating “the revised plans received on 9 Dec 2022 (**including the fence at the boundary**)”.

If the application is granted despite our concerns, we also request an Advice Note be added stating “**The fence at the boundary is to be erected prior to other building work commencing. Confirmation of the boundary by a licensed cadastral surveyor is required before the fence is erected at the cost of the consent holder.**”.

3.2.2. Wording about the side set-back

Advice Note 1. states that “the proposed building is to be extended close to the side boundary (within 500mm)”. If this side set-back is approved despite our concerns, we request clarification that “the proposed building is to be extended close to the side boundary (**no closer than 500mm**)”.

We also request that plans be updated to specify the size of the proposed overhang of the roof eaves as well as the distance of guttering and drainpipes from the boundary to ensure that they are built as drawn and to maximise the accessibility for maintenance and avoid interference with our tree at 64a Passmore Crescent in line with the stated desire of the owners of 64 Passmore Crescent to keep all branches of the tree.

3.2.3. Wording about requirement for surveying

Advice Note 1. states that “Confirmation by a licensed cadastral surveyor may be required.”. We request that this be clarified to read “Confirmation by a licensed cadastral surveyor **is required before the commencement of building at the cost of the consent holder.**”.

3.2.4. Wording about minimising soil disturbance

Point 3. of the proposed draft conditions states that “Soil disturbance for the addition must be confined as much as possible to the proposed building footprint to minimise risk of damage to the health of the root systems of the adjacent hedge and tree at 64A Passmore Crescent.”. We request that this be specified to read “Soil disturbance for the addition must be confined **entirely** to the proposed building footprint to minimise risk of damage to the health of the root systems of the adjacent hedge and tree at 64A Passmore Crescent.”.

3.2.5. Wording about covering costs if the ash tree or hedge are damaged or die

We request that an additional condition be added noting “**If the ash tree or hedge at 64a Passmore Crescent are damaged during construction at 64 Passmore Crescent or die soon after construction then all reasonable costs to ameliorate the damage or remove these and make good the land shall be covered by the owners of 64 Passmore Crescent in their role as consent holders.**”.

3.2.6. Clarification that approval of the application would not imply right to enter

We request a clarification be added to Advice Note 1. indicating that “**This consent in no way confers a right to the consent holder or its contractors to enter the site at 64a Passmore Crescent.**”.

3.2.7. Requirement for planting

We welcome the urban designer’s recommendation for a landscaped garden in front of the proposed extension to the existing double garage at 64 Passmore Crescent, should the application be approved.

Point 2. of the proposed draft conditions states a requirement to “Provide and/or maintain vegetation in the west corner of the site and along area between the extension and the side boundary with 64a Passmore Crescent.” We request that this be clarified to read “**The consent holder must prepare a landscape plan which details planting in the west corner of the site at the side boundary with 64a Passmore Crescent. The landscape plan must be submitted to the Resource Consents Manager at rcmonitoring@dcc.govt.nz for certification. Planting must be undertaken in the first growing season following the construction of the extension and maintained in perpetuity.**”

3.3. Requests if a side set-back of 800mm is approved as a compromise

If the decision is not to reject the proposal as it stands, we request that the required set-back be increased to 800mm as a compromise. This would reduce our concerns about constrained access to the area containing the drainage duct and about potential damage to our ash tree and hedge.

If this side set-back of 800mm were to be approved, we request that the following seven clarifications or additions be made to the draft conditions in Appendix 4 (provided to us on 24 Jan 2022). We make these requests in the spirit of ensuring clarity for all parties, and proposed changes or additions are bolded. Please note that these requests reiterate similar requests noted above and here refer to the scenario where a side set-back of 800mm is approved instead.

3.3.1. Inclusion of a fence as per the plans dated 8 Dec 2022

Point 1. of the proposed draft conditions states that approval would refer to “the revised plans received on 9 Dec 2022”. If a version of these plans are approved with an 800mm side set-back, we request a clarification to this point stating “the revised plans received on 9 Dec 2022 **(including the fence at the boundary)**”.

If the application is granted with an 800mm side set-back, we also request an Advice Note be added stating “**The fence at the boundary is to be erected prior to other building work commencing. Confirmation of the boundary by a licensed cadastral surveyor is required before the fence is erected at the cost of the consent holder.**”.

3.3.2. Wording about the side set-back

Advice Note 1. states that “the proposed building is to be extended close to the side boundary (within 500mm)”. If the application is granted with an 800mm side set-back, we request clarification that “the proposed building is to be extended close to the side boundary **(no closer than 800mm)**”.

We also request that plans be updated to specify the size of the proposed overhang of the roof eaves as well as the distance of guttering and drainpipes from the boundary to ensure that they are built as drawn and to maximise the accessibility for maintenance and avoid interference with our tree at 64a Passmore Crescent in line with the stated desire of the owners of 64 Passmore Crescent to keep all branches of the tree.

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Point 3. of the proposed draft conditions states that “Soil disturbance for the addition must be confined as much as possible to the proposed building footprint to minimise risk of damage to the health of the root systems of the adjacent hedge and tree at 64A Passmore Crescent.”. We request that this be specified to read “Soil disturbance for the addition must be confined **entirely** to the proposed building footprint to minimise risk of damage to the health of the root systems of the adjacent hedge and tree at 64A Passmore Crescent.”.

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We request that an additional condition be added noting **“If the ash tree or hedge at 64a Passmore Crescent are damaged during construction at 64 Passmore Crescent or die soon after construction then all reasonable costs to ameliorate the damage or remove these and make good the land shall be covered by the owners of 64 Passmore Crescent in their role as consent holders.”**.

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We request a clarification be added to Advice Note 1. indicating that **“This consent in no way confers a right to the consent holder or its contractors to enter the site at 64a Passmore Crescent.”**.

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We welcome the urban designer’s recommendation for a landscaped garden in front of the proposed extension to the existing double garage at 64 Passmore Crescent, should the application be approved with a side set-back of 800mm.

Point 2. of the proposed draft conditions states a requirement to “Provide and/or maintain vegetation in the west corner of the site and along area between the extension and the side boundary with 64a Passmore Crescent.” We request that this be clarified to read **“The consent holder must prepare a landscape plan which details planting in the west corner of the site at the side boundary with 64a Passmore Crescent. The landscape plan must be submitted to the Resource Consents Manager at rcmonitoring@dcc.govt.nz for certification. Planting must be undertaken in the first growing season following the construction of the extension and maintained in perpetuity.”**

4. Removal of factual errors from the plans

We request that all factual errors are addressed in any finalised plans for the extension to the existing double garage at 64 Passmore Crescent. We understand that both the Privacy Act 2020 (Section 22) and Building Act 2004 (Section 34) protect our right for all records pertaining to us as the owners of an adjacent property to be accurate and corrected if errors are detected. We would be seriously concerned if legally binding documents include such errors given the potential for confusion about the proposed location of the consent application and who owns which of the two properties in question.

4.1. Error 1: Incorrect address for neighbouring property in plans

We note that the most recent plans refer to our property as 64b Passmore Crescent (top right corner of left sketch within the plans). This address does not exist. This error must be corrected.

4.2. Error 2: Incorrect address for the site of the proposed extension in plans

In addition, the plans refer to the property at 64 Passmore Crescent as 64a Passmore Crescent (bottom right corner of left sketch within the plans). This is incorrect and must be corrected.