

Relevant Information for Local Planning Panel

FILE: D/2020/1288/A **DATE:** 27 June 2023

TO: Local Planning Panel Members

FROM: Bill Mackay, Acting Executive Manager, Planning and Development

SUBJECT: Information Relevant To Item 7 – 38-44 Mountain Street, Ultimo – D/2020/1288/A

Alternative Recommendation

It is resolved that consent be granted to Modification Application No. D/2020/1288/A, subject to the conditions detailed in Attachment A to the subject report to the Local Planning Panel on 28 June 2023, subject to the following amendments (additions shown in **bold italics**, deletions shown in ~~strikethrough~~):

(68A) SITE SUPERVISION AND REPORTING

(a) An Arborist with minimum qualifications in Arboriculture of Level 5 (under the Australian Qualification Framework) must oversee various stages of work within the Tree Protection Zone of ~~any tree~~ **the two street trees along Smail Street which are located adjacent to the building's carpark entrance and listed for retention**. The Arborist must certify compliance with each key milestone detailed below:

~~(i) The installation of tree protection measures prior to the commencement of any construction works;~~

~~(ii) During demolition of any ground surface materials (pavers, concrete, grass etc.) within the Tree Protection Zone (TPZ) of any tree to be retained;~~

~~(iii) During any excavation and trenching for services located within the Tree Protection Zone (TPZ);~~

~~(iv) During any Landscape works within the TPZ which has been approved by Council.~~

(b) An Arboricultural Compliance Report which includes photographic evidence and provides details on the health and structure of tree/s must be submitted to and acknowledged by Council's Area Planning Coordinator or Area Planning Manager at each hold-point listed below:

~~(i) Certification that tree protection measures have been installed in accordance with these consent conditions;~~

(ii) Certification of compliance with **the each** key milestone listed above within 48 hours of completion;

~~(iii) Monthly reporting for the duration of construction and development works within the site;~~

(iv) Details of any other works undertaken on the **specified trees to be retained** or any works within the TPZ. ~~which has been approved by Council.~~

(c) A final compliance report must be submitted to and approved by Council's Area Planning Coordinator or Area Planning Manager prior to the issue of any Occupation Certificate.

Reason

To ensure the protection and ongoing health of trees on the site.

(Condition Added – D/2020/1288/A – 28 June 2023)

(74A) ON SITE LOADING AREAS AND OPERATION

All loading and unloading operations associated with servicing the site, **aside from bin collection**, must be carried out within the confines of the site, at all times and must not obstruct other properties/units or the public way.

At all times the service vehicle docks, car parking spaces and access driveways must be kept clear of goods and must not be used for storage purposes, including garbage storage.

Reason

To maintain the orderly operation of vehicle parking areas and to ensure the public domain is kept free from physical obstructions.

(Condition Added – D/2020/1288/A – 28 June 2023)

Background

On Friday 23 June 2023, the applicant submitted a letter to the panel regarding the recommended conditions of consent under Item 7 – Modification Application: 38-44 Mountain Street, Ultimo - D/2020/1288/A. The applicant's letter proposes the amendment to six conditions of consent.

The applicant is seeking to:

- Request the inclusion of submitted landscape plans within Condition 1 (which includes the list of approved drawings);
- Delete Condition 2(b), and parts of Conditions 22 and 23, and amend Condition 22(b). The conditions relate to the Green Walls and Green Roof.

- Provide clarification to the Panel, current background details regarding Conditions 22 and 23 (relating to Green Walls and Green Roof);
- Amend Condition 68A (relating to site supervision and reporting associated with works near street trees)
- Amend Condition 74A (relating to on-site loading operations)

The applicant's letter is attached as **Attachment A**.

The following comments are provided in response to the letter.

Condition 1 and 23 (which cross references the approved drawings and landscape plans)

The applicant requests that the landscape plans submitted within this s4.55 application are endorsed as part of Condition 1 of the recommended conditions of consent (which relates to stamped plans). The applicant also queries why the plans were not endorsed as part of the original DA consent, D/2020/1288.

The original DA was determined by the Local Planning Panel on 22 September 2021. The Panel resolved to not include any landscape drawings in Condition 1, and to instead require further landscape details to be separately addressed and satisfied by Condition 23.

Council's latest correspondence to the applicant indicates that further information is still required to satisfy Condition 23(a)(v), (vii) and (viii), whereby (v) and (viii) relate to landscape plans. Council has corresponded with the applicant regularly since November 2022 to advise what requirements are needed to satisfy Condition 23.

Council's Landscape Assessment Officer has not had sufficient time to review this specific request to delete particular aspects of Condition 23 or include specific landscape plans within Condition 1, and as such, Council is not able to confirm that all of the submitted landscape plans are suitable.

Rather than delay the determination of this Section 4.55 modification application, Council recommends that Condition 1 and 23 be maintained as currently recommended to the Panel. Council notes that the applicant is close to satisfying the condition. Pending determination, and if the applicant has responded appropriately to Council's latest correspondence and the meeting held 14 June 2023, Council will be able to issue a Condition Satisfied letter (regarding Condition 23) to the applicant as soon as practicable.

Condition 2 (related to design modifications)

The applicant's letter requests the deletion of Condition 2(b), noting that the requirements to satisfy this condition are enclosed within the landscape plans which the applicant requests endorsement of within Condition 1.

Details required to satisfy Condition 2(b) are indeed located within the applicant's latest set of submitted landscape plans. As discussed however, the landscape plans are not recommended to be endorsed as part of Condition 1, and are capable of being separately endorsed by the satisfaction of Condition 23. Condition 2(b) is capable of being satisfied when the landscape plans are satisfied under Condition 23, so long as the required details of Condition 2(b) remain within any revisions to the landscape plans.

The applicant has also provided details to Council in an attempt to satisfy Conditions 2(a), 2(c) and 3. A preliminary review of these details by Council's Heritage and Urban Design Team indicates that they are satisfactory. Pending determination, Council will be able to issue the applicant a Condition Satisfied letter regarding these conditions letter shortly after determination.

Condition 22 and 23 (relating to Green Walls and Roofs)

The applicant's letter submits that the requirements to satisfy specific aspects of Condition 22 and 23 have been provided to Council, and that subject to endorsement of relevant landscape plans, particular aspects of the Conditions can be considered satisfied, and deleted.

Condition 22 requires that the applicant provide plans, technical specifications and drawings of the proposed Green Wall to ensure appropriate installation, maintenance and survivability of the green wall. This condition is required to be satisfied prior to the issue of a Construction Certificate.

Condition 23 requires the applicant to submit landscape plans to Council which demonstrate landscaping and structures, planting and soil details, and drainage and irrigation specifications. Condition 23(a) is required to be satisfied prior to the issue of an occupation certificate.

The applicant has provided a package of information to attempt to satisfy Conditions 22 and 23 on Friday 23 June 2023. Subject to determination, and the confirmation from Council's Landscape Assessment Officer that appropriate information is included in the package, Council is prepared to issue the applicant a Condition Satisfied letter as soon as practicable.

The applicant notes that the Council Assessment Report indicates that the modification seeks partial deletion of Condition 23, and that this is an error by Council. Council notes that this is not an error, and as proposed in the applicant's letter, only parts of Condition 23 are requested to be deleted.

The applicant also notes that Condition 22(b) is not sought to be deleted and instead is sought to be amended to require the submission of a Maintenance Plan prior to an Occupation Certificate (OC) instead of the specified Construction Certificate (CC). Council notes this is also incorrect. The applicant briefly requested the amendment during assessment of the application due to issues engaging a landscape consultant. This matter was noted to be resolved by the applicant, and revised maintenance plans have since been submitted by the applicant in an attempt to satisfy this condition. Notwithstanding this, the applicant currently seeks to defer this condition to the OC stage, as noted in the letter.

Condition 22(b) is not recommended to be modified to defer the required Maintenance Plan as it is required to include the details of how safe access will be provided to the plants, soil and structural elements for installation and maintenance. As this information relates to installation, the details are required prior to CC.

The applicant also requests the deletion of the majority of Condition 22 and references Council's correspondence sent 30 May 2022 (**attached as Attachment B**), which specified aspects of Condition 22 which are satisfied and aspects which require additional information and amendments. While Council has noted that some aspects of the condition are satisfied, the proposal to delete specific aspects of the condition were proposed last week on Friday 23 June 2023. Council's Landscape Assessment Officer has not had sufficient time to review this proposal. Additionally, Council's correspondence to the applicant was informative, to

assist in narrowing down deficient information, and not designed to inform the preparation of a development consent.

Council recommends that Condition 22 be maintained as currently recommended to the Panel. Council notes that the applicant is near to satisfying the condition. Pending determination, and if the applicant has responded appropriately to Council's latest correspondence and the meeting held 14 June 2023, Council will be able to issue a Condition Satisfied letter to the applicant as soon as practicable.

Condition 68A (related to alternative recommendations)

Condition 68A requires arborist site supervision at various milestones, and reporting at various stages, to the satisfaction of Council's Area Planning Manager.

The applicant's letter requests that Condition 68A, which was not included in the original DA consent, be reduced in scope to only regard trees likely to be affected by the proposed modification, instead of all street trees surrounding the site. The applicant requests that parts (a)(i), (a)(ii), (a)(iv) and the entirety of part (b) should be deleted of Condition 68A be deleted.

In response to the applicant's letter, Council's Tree Management Officer has reviewed Condition 68A and reduced the requirements of the condition to specifically relate to the two trees on Smail Street which are likely to be affected by the proposed modification. The Tree Management Officer recommends the retention of reporting aspects of the condition to ensure the requirements and intent of the condition are achieved during the proposal's construction phase. As such, while the applicant's recommended amendments are generally supported, Condition 68A(b)(ii) and (iv) are not recommended to be deleted.

Condition 74A (related to alternative recommendations)

As noted in the applicant's letter, a conflict between conditions occurred in the drafting of the recommended conditions of consent in Attachment A to Item 7 – Modification Application: 38-44 Mountain Street, Ultimo - D/2020/1288/A in that Condition 74A required that unloading and loading operations related to servicing the site to be accommodated on site, whereas Condition 73 permitted a wheel-out/wheel-back bin service. Council's Transport and Access Team have advised that the applicant's proposed amendment to Condition 74A is supported and would no longer conflict with existing condition of consent - Condition 73.

Prepared by: Thomas Walters

Attachments

Attachment A. Applicant's Letter to Local Planning Panel

Attachment B. Correspondence to the Applicant Regarding Outstanding Information to Satisfy Conditions 22 and 23, sent 30 May 2022

Approved

A handwritten signature in black ink, appearing to read 'W. Mackay', is positioned to the right of the 'Approved' text.

BILL MACKAY

A/ Executive Manager, Planning and
Development

Attachment A

Applicant's Letter to Local Planning Panel

23 June 2023

City of Sydney
GPO Box 1591
SYDNEY 2001

Attn: Thomas Walters, Development Assessment Planner

Dear Thomas,

**RE: LETTER TO COUNCIL AND LOCAL PLANNING PANEL
DEVELOPMENT APPLICATION NO: DA-2022/1288/A
ADDRESS: 38-44 MOUNTAIN STREET, ULTIMO**

Creative Planning Solutions ('CPS') act on behalf of Stangcorp Pty Ltd ('the Applicant') for modification application DA-2022/1288/A at 38-44 Mountain Street, Ultimo, which is due to be considered by the Local Planning Panel ('LPP') City of Sydney Council ('Council') at its upcoming meeting of 28 June 2023.

The correspondence within this letter has been prepared upon consideration of the Council Assessment Report and the recommended change to conditions of consent. The proponent is supportive of the recommendation for approval and is grateful to Council for its continued attention to this matter. However, the proponent asks the Council and the LPP to reconsider the items discussed below.

1. Condition 22 and 23

The modification application seeks substantial amendments to condition 22 and 23, on the basis that the landscape plans provided with the modification application are able to satisfy the requirements of the conditions. The Council Assessment Report indicates that the modification seeks the partial deletion of condition 23. This appears to be an error, as the application seeks the partial deletion of condition 22, given it seeks to defer the requirements of condition 22(b) until prior to the issue of an occupation certificate.

Attached to this letter is Council correspondence associated with the landscape plans, dated 26 May 2023. The blue text is authored by Council and provides the position of Council against each component of the conditions as at 26 May 2023.

Having regard to those comments, and other information that was already with Council, the following comments are provided on each component of conditions 22 and 23 (those shown in italics should be deleted or modified):

Condition	Comment
22(a)(i)	<i>A structural drawing was provided to Council on 15 May 2023, but may not have been referred internally. At a meeting held on 13 June 2023, Council advised that this drawing was satisfactory.</i>
22(a)(ii)	<i>The relevant missing landscape drawing, L402, was provided to Council in the earlier submission of 24 February 2023, as well as the submission of December 2022.</i>
22(a)(iii)	<i>The attachment indicates that the condition is satisfied.</i>
22(a)(iv)	This condition should be retained (amended documentation has been recently submitted addressing Council’s most recent comments).
22(a)(v)	<i>No lighting is proposed and these condition does not need to be retained.</i>
22(b)	<i>The Council commentary on this condition is critical of the potential for future changes to this plan, whilst simultaneously not supporting the deferral of this plan until an occupation certificate. The modification seeks this change as the maintenance strategy is better able to be identified closer to occupation (noting that this would be consistent with the requirement of condition 23(b)). This condition should be either deleted or amended such that the plan is deferred until the issue of an occupation certificate.</i>
23(a)(i)	<i>Condition 7 of DA-2022/1288 has placed limitations on the use of the rooftop. Acoustic and visual privacy were already assessed in the development application and should not form part of the post-consent landscape assessment.</i>
23(a)(ii)	<i>This plan was provided to Council on 26 April 2023. It shows all of the information required by the condition, and the information shown in Council’s blue response comments.</i>
23(a)(iii)	<i>The attachment indicates that the condition is satisfied.</i>
23(a)(iv)	<i>The attachment indicates that the condition is satisfied.</i>
23(a)(v)	This condition should be retained (amended documentation has been recently submitted addressing Council’s most recent comments).
23(a)(vi)	<i>The attachment indicates that the condition is satisfied.</i>
23(a)(vii)	<i>There are no “inaccessible” areas of the green roof, and this information is therefore not required. The Council comments provided in the attachment are unrelated to the requirements of this part of the condition.</i>
23(a)(viii)	This condition should be retained (amended documentation has been recently submitted addressing Council’s most recent comments).
23(b)	This condition should be retained, noting that the maintenance plan is not required until prior to the issue of an occupation certificate.

2. Condition 1 - Landscape Plans

Having regard to the comments above on conditions 22 and 23, it is important to note that a complete landscape package was submitted with the original development application. It is not clear why this package was not endorsed within condition 1 of the original development consent. The current modification application also provides a complete landscape package, and it is again not recommended for endorsement within condition 1.

The continued omission of the landscape package from the development consent, and reliance on generic conditions of consent, has frustrated the finalisation of the landscape set. Since November 2022, there have been four submissions to Council seeking to satisfy conditions 22 and 23 (the Council Assessment Report does not mention the two sets of plans submitted prior to the modification application) and a further package is to be submitted ahead of the LPP meeting. Further, Council's request of 13 April 2023 raised only 5 issues, and the correspondence of 15 May 2023 had reintroduced issues that the applicant had understood to be satisfied.

It is evident that Council has been making the unnecessary distinction between plans that are intended to satisfy the conditions and plans that are part of the modification application, when the submitted plans seek to address both, precisely to avoid this confusion. This issue has caused some inconsistent messaging from Council and has caused some plans to be overlooked by internal referral officers.

This process would be made simpler if the landscape plans were endorsed within the development consent, and the conditions amended to only deal with specific deficiencies with the landscape plans (rather than generic commentary). This would spare further Council and applicant resources being unnecessarily devoted to this matter.

For convenience, if the LPP is agreeable to this change, the landscape plans and associated structural plan have been listed in the table below in the format used in condition 1(a):

Drawings prepared by Loci Design:

<i>Drawing Number</i>	<i>Drawing Name</i>	<i>Date</i>
<i>L000</i>	<i>Cover Sheet / Overall Plan + Drawing List</i>	<i>24.04.23</i>
<i>L050</i>	<i>Legend Schedule + Selections</i>	<i>24.04.23</i>
<i>L103</i>	<i>Plan / Landscape L3</i>	<i>21.04.23</i>
<i>L104</i>	<i>Plan / Landscape L4</i>	<i>21.04.23</i>
<i>L105</i>	<i>Plan / Landscape L5</i>	<i>08.02.23</i>
<i>L106</i>	<i>Plan / Landscape Roof</i>	<i>08.02.23</i>
<i>L203</i>	<i>Planting Elevation / Landscape L3 + L4</i>	<i>22.12.22</i>
<i>L204</i>	<i>Planting Plan / Landscape L4</i>	<i>22.12.22</i>
<i>L205</i>	<i>Planting Plan / Landscape L5</i>	<i>24.04.23</i>
<i>L303</i>	<i>Plan / Irrigation + Maintenance L3</i>	<i>24.04.23</i>

L304	Plan / Landscape L4	24.04.23
L305	Plan / Landscape L5	24.04.23
L400	Details 01 / Landscape	22.12.23
L401	Section / Landscape	22.12.23
L402	Details 03 / Landscape	23.12.22
L403	Details 04 / Landscape	08.02.23
L404	Details 05 / Landscape	23.12.23
L505	Details 06 / Landscape	23.12.23

Drawings prepared by SSA:

<i>Drawing Number</i>	<i>Drawing Name</i>	<i>Date</i>
S71.12	Level 2 to Roof Sections - 3	16.12.22

3. Condition 2

In relation to condition 2:

- Council have given a late direction on how best to satisfy 2(a). This direction is agreed to and this condition should remain.
- Condition 2(b) has been satisfied. Page 39 of the Council Assessment Report indicates that this condition is “related to conditions 22 and condition 23”, but does not mention that the plans before the Council have satisfied this condition. On this basis, it should be deleted, and the landscape plans endorsed within the consent.
- Condition 2(c) has largely been satisfied. The only concerns that remain with this condition relate to the materiality. In an email dated 9 June 2023, Council has advised that it is satisfied that steel framing is not required given it is not compatible with the double glazing required by the Section J report. This leaves only the fritting details, which can be addressed as part of satisfying condition 3.

4. Condition 68A

Paragraph 67 of the Council Assessment Report indicates that this condition has been included due to the inclusion of the gas and water meter, and the relocation of the approved hydrant booster. However, the gas and water meter are proposed in the same location of the approved hydrant booster, creating no additional impacts. In addition, the proponent has provided stormwater and utility plans, as well as an arboricultural mapping of the TPZ of the Council street trees. The information demonstrates that the services do not impact on Council street trees.

The only nexus for this condition is the proposed new location of the hydrant booster, yet the condition seeks to broadly require arboricultural supervision throughout the duration of all works. It is not

appropriate or lawful to seek to impose conditions that are not relevant to the modification. As a result, parts (a)(i), (a)(ii), (a)(iv) and the entirety of part (b) should be deleted. Only the introductory paragraph to part (a), as well as part (a)(iv) are relevant to the modification.

5. Condition 74A

As garbage collection cannot be carried out from within the confines of the site, the following change to the first paragraph of condition 74A is sought (change shown underlined):

All loading and unloading operations associated with servicing the site, aside from bin collection, must be carried out within the confines of the site, at all times and must not obstruct other properties/units or the public way.

It is noted that this would conflict with condition 73(b), and therefore condition 73(b) should also be deleted, as it looks to have been imposed in error.

Should you have any questions on the above, please do not hesitate to contact the undersigned.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Brendon Clendenning
Principal Planner, Creative Planning Solutions Pty Limited

Attachment B

**Correspondence to the Applicant Regarding
Outstanding Information to Satisfy Conditions
22 and 23**

Condition 22 LANDSCAPED (GREEN) WALLS

The design of the green wall must demonstrate the response to site conditions, including in particular light availability, sun and wind impacts.

(a) Prior to the issue of a Construction Certificate, the following design details of the proposed green wall must be submitted to, and approved by Council's Area Coordinator Planning Assessments / Area Planning Manager.

(i) *Detailed drawings demonstrating how the green wall is constructed, including proposed materials, planter dimensions, and integration into the wall structure;*

Not yet satisfied. Submit missing architect green wall frame details and structural engineer wall details for breathing wall and living wall modules

(ii) *Details of the proposed growing medium, including soil depth and type;*

Not yet satisfied. Submit missing specification for proposed Junglefy green wall modules

(iii) *Location, numbers, type and size of plant species selected (with plants being selected on the basis of the site conditions);*

Satisfied

(iv) *Drainage, irrigation and waterproofing details (as applicable); and*

Not yet satisfied. Submit relevant hydraulic engineer plans to confirm the location of rainwater outlets, connection to the stormwater system and location of the irrigation controller.

Submit missing irrigation specification

(v) *Details of any additional lighting (where applicable).*

Not yet satisfied. Confirm the lighting levels are suitable for breathing and living walls to thrive

(b) *Prior to the issuing of a Construction Certificate a maintenance plan is to be submitted to, and approved by Council. The maintenance plan is to include information on:*

(i) *How access will be provided to the plants, soil and structural elements for installation and maintenance; and*

(ii) *Details outlining the intended strategy for decommissioning the planting works should plants fail. This strategy is to ensure that the finish to the wall is well maintained throughout its life.*

Partially satisfied. The landscape maintenance plan submitted appears to be a draft and includes caveats such as:

"...being for coordination purposes only and is subject to review and finalisation prior to implementation." And "An Access Strategy Plan needs to be designed, engineered and implemented by qualified contractors."

Condition 23 LANDSCAPED (GREEN) ROOFS

(a) A detailed plan of the green roof, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by Council's Area Coordinator Planning Assessments / Area Planning Manager prior to the issue of a Construction Certificate. The plan must include:

(i) *A statement that includes details of proposed use of the green roof, general accessibility, as well as noise and privacy treatments.*

Not yet satisfied. Statement not provided, submit

(ii) *Location of existing and proposed structures, services and hard landscaping on the rooftop, roof fixings and other structural elements that may interrupt waterproofing, including cross-sectional details of all components.*

Not yet satisfied.

Landscape plans and details note that the climbing structure to wall (height and width) and pergola height are to be confirmed by the architect.

Architect confirmation of the pergola height and climbing frame features on the rooftop

Submit relevant architect details for pergola, furniture fixings, balustrades

(iii) *Details of earthworks including mounding and retaining walls and planter boxes (if applicable).*

Satisfied

(iv) *Details of the location, sizes and numbers of plants used with reference to NATSPEC (if applicable), with preference for drought resistant species.*

Satisfied

(v) *Details of the soil media/substrate type and depth.*

Not yet satisfied. Submit missing landscape specification or confirm the landscape schedule replaces a specification.

(vi) *Details of installation methodology e.g. safety considerations for working at height, location of maintenance hooks (if applicable) transport materials etc.*

Satisfied

(vii) *Details of accessible and inaccessible areas on the Green Roof. Where proposed to be inaccessible, Green Roofs are required to remain such during occupation of the property.*

Partially satisfied. The landscape maintenance plan appears to be a draft and includes caveats such as: "...being for coordination purposes only and is subject to review and finalisation prior to implementation." And "An Access Strategy Plan needs to be designed, engineered and implemented by qualified contractors."

Finalise the plan and submit

(viii) *Details of drainage and irrigation systems, including overflow provisions and water retention cells in the drainage layer (if applicable).*

Not yet satisfied. Submit relevant hydraulic engineer plans to confirm the location of rainwater outlets, connection to the stormwater system and location of the irrigation controller.

Submit missing irrigation specification

(b) Prior to the issue of a Construction Certificate, the following details are to be submitted to and approved by the Accredited Certifier:

(i) Evidence the green roof has been assessed as part of the structural certification provided for the development; and

(ii) Evidence the green roof has been assessed as part of the waterproofing certification provided for the development.

(c) All landscaping in the approved plan is to be completed prior to the issue of any Occupation Certificate.

(d) Prior to the issue of any Occupation Certificate, a maintenance plan is to be submitted and approved by the Principal Certifier. A copy of the maintenance plan is to be kept on site at all times during construction and must be produced to Council on request following completion. The Maintenance Manual must include as a minimum:

(i) Frequency and methodology of different maintenance requirements including the removal of green waste.

(ii) Details of safety procedures.

(iii) Laminated copies of 'As Built' drawings.

(iv) Manufacturer's contact details and copies of manufacturers' typical details and specification;

(v) Copies of warranties and guarantees relating to all materials and plant used in construction; and

(vi) Decommissioning procedures.