

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