

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