

## COUNCIL ASSESSMENT REPORT

Panel Reference	2017STH028
DA Number	2017.421
LGA	Bega Valley Shire Council
Proposed Development	Retail Premises - Supermarket
Street Address	103 & 105-107 Main Street, Merimbula
Applicant/Owner	Bega Valley Shire Council
Date of DA lodgement	16 October 2017
Number of Submissions	1
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	The development has a CIV of \$5.5 million and Council has an interest as owner of the land.
List of all relevant s79C(1)(a) matters	<p>i.e. any:</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy No. 55 Remediation of Land</li> <li>• State Environmental Planning Policy No. 64 Advertising and Signage</li> <li>• State Environmental Planning Policy No. 71 Coastal protection</li> <li>• Bega Valley Local Environmental Plan 2013</li> <li>• Draft Coastal Management SEPP</li> <li>• Bega Valley Development Control Plan 2013</li> <li>• Section 94 and 94A Development Contributions Plan 2014</li> <li>• EP&amp; A Regulations 2000 - Regulation 92</li> </ul>
List all documents submitted with this report for the Panel's consideration	<p><b>Appendix 1: Recommended conditions of consent</b>  <b>Appendix 2: Architectural and landscaping plans</b>  <b>Appendix 3: Section 79C assessment report</b>  <b>Appendix 4: Statement of Environmental Effects</b>  <b>Appendix 5: Addendum to Statement of Environmental Effects</b></p>
Report prepared by	Mark Fowler on behalf of Bega Valley Shire Council
Report date	1 June 2018

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

**Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (\$94EF)?

**Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment?

**Yes**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

# Executive Summary

The Development Application is for a Retail Premises comprising an ALDI Store, associated carparking, loading dock and the construction of a new service road.

The development application has been assessed against the relevant matters for consideration pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 (all references in this report to Section 79C is to be taken as reference to Section 4.15 of the amended Act) and supporting plans/documents are attached as Appendix 1-5. The relevant matters for consideration are as follows, together with a summary of observations and recommendations.

**State Environmental Planning Policy (State and Regional Development) 2011 – Part 4 Regional Development.** The Southern Joint Regional Planning Panel is the Determining Authority for this application as the development has a Capital Investment Value of \$5.5 million and Council has an interest as owner of the land.

**State Environmental Planning Policy 55 Remediation of land** – The site has been used as a Child care centre, Council administration centre, indoor recreation facility and carpark. The site has not been previously identified as being contaminated.

The site is suitable for the proposed development and is therefore able to achieve compliance with SEPP 55.

**State Environmental Planning Policy (Advertising and Signage) 64** – The proposed signage is considered to meet the provisions of the SEPP including the assessment criteria listed in Schedule 1 through the provision of signage that is compatible with the desired and visual character of the Merimbula Commercial area, by providing effective communication in suitable locations, and that is of high quality design and finish. Standard conditions relating to their ongoing maintenance is recommended.

**State Environmental Planning Policy 71 (Coastal Protection) 2002** – Clauses 2 and 8. The proposed development is consistent with the provisions of the SEPP. Standard conditions are recommended to ensure that appropriate soil erosion and sedimentation measures are undertaken to ensure protection of coastal environments.

## **Bega Valley Local Environmental Plan 2013 (BVLEP 2013)**

### **Clause 2.3 Zone objectives and Land Use Table**

The proposal has been assessed in accordance with the objectives of the zone and was found to be satisfactory. The proposed ALDI Store, associated earthworks, and the construction of a new service road are permitted with Development Consent.

### **Clause 2.7 Demolition requires development consent (other than where exempt)**

The application seeks to demolish all existing structures on site. A detailed Construction Management Plan nominating method of demolition needs to be prepared and conditions of Consent are recommended.

### **Clause 4.3 Height of buildings**

The development site is subject to a maximum building height of 16 metres. The maximum building height measures 15.32 metres and complies.

### **Clause 5.5 Development within the coastal zone**

The provisions of Clause 5.5(2) and (3) have been considered and the proposal is considered satisfactory.

#### Clause 7.2 Earthworks

The consent authority must consider before granting consent the implications of the proposed development on the environment/locality in relation to earthworks.

The proposal requires excavation up to a maximum of 6.845 metres below existing surface levels in the northern portion of the site.

A geotechnical investigation was carried out by Aitken Rowe Geotechnical Engineering. The investigation report has been reviewed and is considered to be satisfactory.

It is recommended as a condition of consent that dilapidation reports be undertaken for adjoining premises prior to excavation commencing on-site and on completion of construction works.

#### **Draft Coastal Management SEPP**

The site is located within the Draft Coastal Management SEPP. The site is mapped within the Coastal Environment and Use Area and therefore assessment against Division 3, 4 and 5 was undertaken.

The objectives of the relevant zones/area generally relate to the protection of environmental and waterway values, and ensuring development does not have an adverse scenic impact.

As detailed throughout this assessment report, the development is considered to provide acceptable environmental outcomes. The proposal is therefore considered consistent with the provisions of the draft policy.

It is considered that there will be no increase in coastal hazards as a result of this development due to its setback to coastal foreshores and coastal lakes/waterways.

#### **PROJECT DESCRIPTION**

The application was lodged in October 2017. An amendment to the development application was lodged by the applicant on the 6 March 2018.

The development site consists of two allotments, with a combined area of 4,917.2m<sup>2</sup>, located in the coastal town of Merimbula. The site has frontage to Main Street and contains two disused buildings with associated car parking areas and landscaping.

The main elements of the development proposal relevant to the subject site are:

- Demolition of existing buildings and site earthworks including cut and fill to prepare the site for the proposed development;
- Erection of a 1,685.8m<sup>2</sup> GFA supermarket.
- Removal of four (4) trees and small garden beds;
- Construction of a building containing a new ALDI Store with associated office, staff room, parents room, toilets, and facility rooms;
- Construction of 89 car parking spaces, including six accessible parking spaces (51 car spaces in the at grade car park and 38 car spaces in the basement floor) and abicycle parking racks to accommodate 8 bicycles;
- Construction of a loading dock at the northern side of the building to accommodate up to 19m delivery vehicles;

- Construction of a new awning projecting along the southern and western building elevations of the building;
- Construction of a lift and associated lift overrun;
- Construction of retaining walls along the western and southern site boundary;
- The construction of a new service road over the Merimbula-Imlay Bowling Club's land at 115-127 Main Street to provide access to the subject site from Sapphire Coast Drive. The new service road will provide two access points, being to the proposed loading dock and basement car park for customers.
- One (1) vehicular access via the existing driveway to 105-107 Main Street;
- 307m<sup>2</sup> of landscaping works;
- Erection of a fence along the eastern site boundary shared with 101 Main Street;
- One (1) double sided pylon business identification sign located near the vehicular access off Main Street;
- Four (4) wall mounted business identification signs on the building's north, east, south, and west elevations;
- Two (2) wall-mounted signs showing car park entries on the north and south elevation; and
- One (1) lifestyle graphic on the north elevation carrying images of fresh grocery produce.
- A retaining wall with a fence is proposed and shown on the DA plans between the site and 101 Main Street. The retaining wall of around 400mm will be constructed in masonry with suitable metal fence treatment (around 1.2-1.4m) with a total height (around 1.8m) to provide appropriate security and safety outcomes and ensure no vehicular conflict.

The proposed trading hours of the ALDI Store will be 7.00 am to 10.00 pm, 7 days a week. Notwithstanding, the ALDI Store typically trades within the following times: Monday to Sunday: 8.00 am to 8.00 pm. The loading dock would operate 24 hours per day, 7 days per week.



*Building perspective Source: Development application*

### **Site & Locality**

The site is located in the central business area of Merimbula, on the northern side of Main Street. The site adjoins an Indoor recreation facility (Top Fun), a proposed Woolworths Supermarket currently under construction, a number of smaller retail and office premises, and vacant land to the North.



Aerial Plan showing site and adjoining premises Source: Council Aerial imagery

The site consists of two allotments with an area of approximately 4,917.2m<sup>2</sup>. Vehicular access to the development site is currently obtained via two existing driveway cross overs to/from Main Street. One of the accesses is over a Right of carriageway over the adjoining Strata Plan 41712 which is not proposed to be utilized.



Zoning Map Extract - Source: Bega Valley Local Environmental Plan 2013



The development site is zoned B2 Local Centre under BVLEP 2013.

The development site is affected by the following constraints under BVLEP 2103:

- 16 metre maximum building height;

Since lodgment of the development application in October 2017, the following milestones have occurred:

- The development plans, Statement of Environmental Effects and associated reports in support of the application were notified to the public between 8 November 2017 and 22 November 2017, with one submission received;
- A briefing meeting was held on-site with Southern JRPP members on the 6 February 2018 with the following matters discussed;
  - Public access;
  - On site vegetation and landscaping;
  - Presentation of loading area and servicing area to new road;
  - Landscaping in relationship to the proposed building and from adjoining lands; and
  - Land level to adjoining site.
- The development application was referred to Bega Local Aboriginal Land Council. No comments were received in relation to the proposal;
- On 2 March 2018 the applicant provided Amended Plans with only the following minor changes;
  - Revise the new ALDI Store at-grade car park egress/ingress point from the existing driveway at 101 Main Street to the existing property egress/ingress point at 105-107 Main Street;
  - Revise the at-grade car park layout;
  - Realign the vehicular access ramp from the at-grade car park to the basement car park;
  - Reduce the at-grade parking spaces from 63 to 51 spaces, resulting in a total parking provision of 89 spaces;
  - Erect a fence along the eastern site boundary shared with 101 Main Street;
  - Modify the proposed ALDI Store forecourt layout;
  - Correct the error of gross floor area and floor space area ratio calculation; and
  - Increase the proposed landscaped area from 284m<sup>2</sup> to 307m<sup>2</sup>.
- The development application was referred to the NSW DPI Office of Water as approval under the Water Management Act 2000 was required, with the proposed service road would encroach into 'waterfront land' hence the requirement for a Controlled Activity Permit. Their comments and General Terms of Approval were provided and attached in the Draft consent detailed in Appendix 1.
- The development plans were referred for relevant Council internal referrals. Internal referrals have raised no concerns with the development except for the provision of standard conditions relating to construction requirements for access and road construction, water and sewer infrastructure requirements, water and sewer headworks charges and demolition and building requirements.

## **Assessment Report**

### **Assessment Report Contents**

1. Section 79C: Potential Matters for Consideration
2. Conclusion
3. Recommendation

## **1. SECTION 79C: POTENTIAL MATTERS FOR CONSIDERATION**

A brief assessment of the proposed development in accordance with S79C is as follows:

### **Section 79C (1) (a) (i) the provisions of any EPI's**

#### ***State Environmental Planning Policy (State & Regional Development) 2011***

The development qualifies as Regional Development, based on the proposal having a capital investment value of more than \$5 million and is proposed to occur on land currently owned by Council (Clause 4 of Schedule 4A under Environmental Planning and Assessment Act, 1979). Consequently, the Southern JRPP exercises the consent functions of Bega Valley Shire Council.

#### ***Bega Valley Local Environmental Plan 2013***

The site is located within the B2 Local Centre Zone under BVLEP 2013 and the proposed ALDI Store and ancillary facilities is defined as a **shop** under the Plan and is permissible with consent in the B2 zone.

The proposed service road over the Merimbula-Imlay Club's land at 115-127 Main Street is located within the B4 Mixed Use Zone. The new service road is defined as a **road** under BVLEP 2013 and is permitted with consent in the B4 zone.

The objectives of the B2 Zone are;

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To enable other land uses that are complementary to, and do not detract from, the viability of commercial uses within the zone.
- To minimise conflict between land uses on land in the zone and land uses on land in adjoining zones.
- To strengthen the viability of existing business centres as places for investment, employment and cultural activity.

It is considered that the development is consistent with the zone objectives by providing an additional supermarket that would service the people who live, work and visit the area. The development has the opportunity to encourage employment opportunities with its location close to public transport links, namely bus services.

As detailed throughout the accompanying Section 79C assessment, the proposal minimises impact to the surrounding land uses and would strengthen the viability of the Merimbula central business district as a place to invest and advance employment activity.

#### **Clause 2.7 Demolition requires development consent**

The development application proposes demolition works, and accordingly has sought consent for these demolition works.

#### **Clause 4.3 Height of buildings**

The development site is subject to a maximum building height of 16 metres. The maximum building height measures 15.32 metres, and is therefore consistent with the LEP provisions.

#### **Clause 7.2 Earthworks**

The consent authority must consider before granting consent the implications of the proposed development on the environment/locality in relation to earthworks.

The proposal requires excavation up to a maximum of 6.845 metres below existing surface levels in the northern portion of the site.

A geotechnical investigation carried out by Aitken Rowe Geotechnical Engineering has been reviewed and considered to be satisfactory. It is recommended as a condition of consent that dilapidation reports be undertaken on adjoining premises prior to excavation commencing on-site.

### **Section 79C (1) (a) (ii) the provisions of any draft EPI**

#### **Draft Coastal Management State Environmental Planning Policy**

The development site is located within the Draft Coastal Management Zone. In particular, the site is located within the Coastal Use zone and the eastern portion of the development site is located within the Coastal Environment Area. The objectives of the relevant zones/area generally relate to the protection of environmental and waterway values and ensuring development does not have an adverse scenic impact.

As detailed throughout this assessment report, the development is considered to provide acceptable environmental outcomes including adopting Water Sensitive Urban Design (WSUD) approaches, detailed civil engineering designs, and geotechnical investigations to ensure the proposal has no detrimental impact on the coastal environment. The proposal is therefore considered consistent with the provisions of the draft policy.

No other draft EPI's apply to the development site and/or proposed development.

### **Section 79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)**

#### **Bega Valley Development Control Plan 2013**

The following sections of Development Control Plan 2013 (DCP 2013) are considered relevant to the proposal.

### **Section 2 Commercial Development**

**Clause 2.4** provides development controls specific to Merimbula Town Centre. The following statement is provided in relation to the Desired Future Character for Merimbula:

'The strong desire is for Merimbula to retain its 'coastal village charm'. The challenge is to try to blend that style and character into a district service centre within an anticipated resident 'shopper' catchment population in the order of 11,000 persons by 2025. This population of 'shoppers' more than doubles in the peak tourist season.'

The site sits in Precincts 5 (Market Street Village) and 6 (Main Street) of the Merimbula Town Centre as defined by DCP 2013.





Merimbula Town centre precincts

The Specific Objective for Precinct 5 is: 'Continue to develop as the main retail centre in Merimbula' and Precinct 6 is: 'Continue to develop as the main daily shopping and retail centre in Merimbula, providing a mix of large and small retail outlets and uses that enhance the retail focus'. It is considered that the development is not inconsistent with the objectives of each Precinct.

The design is consistent with the Desired Future Character of Merimbula and design principles for Precincts 5 and 6 which seek to achieve desirable buildings and a quality urban design that complements the amenity of the area, making pedestrians feel at ease. The proposed development will improve vehicular and pedestrian access through the extension of the rear Service road currently under construction that would gain access back to Sapphire Coast Drive. The proposed works would not alter the existing informal pedestrian linkage from the Berrambool oval through the site and into Main Street.

The applicant identified that the proposed development will make a positive contribution to achieving these requirements as follows:

- The proposal comprises a designated pedestrian pathway between Main Street and the proposed ALDI Store entry.
- Public art can be accommodated along the Main Street frontage area or elsewhere in the Town Centre, which will make positive visual and interesting contribution to the streetscape.
- The proposal will not result in signage cluster. A total of five (5) business identification signs are proposed, including four (4) wall-mounted signs and one (1) pylon sign.
- A total of 89 car parking spaces, including six accessible parking spaces (51 car spaces in the at grade car park and 38 car spaces in the basement floor) and bicycle racks to accommodate 8 bikes.
- All plant and the lift overrun is incorporated within the architecture of the building and concealed from view.

These design provisions are considered consistent with the design requirements for Merimbula.

The plans detail a new electrical substation near the front setback with Main Street. To ensure that the visual amenity of the site when viewed from Main Street is maintained, it is recommended that a visual treatment be erected between the Main Street boundary and the electrical substation to screen it.

## **2.4.5 General requirements**

### **2.4.5.1 Setbacks**

BVDCP 2013 has an applicable minimum setback for the site for the ground and first floor as zero. The development complies with the requirements for zero setbacks to the eastern boundary. A greater setback is provided to the Main Street frontage and the northern and western boundary. The applicant identified that the footprint and setbacks of the proposed development balance the operational requirements of the proposed ALDI Store, the site topography, the amenity of adjoining properties, pedestrian and vehicular access requirements and the relationship of the site with the surrounding area.

Although the development is not consistent with the requirement for buildings to have a zero setback to Main Street, it is considered appropriate as the setback would assist in removing any overshadowing onto the public footpath and appropriate street activation has been provided through landscaping, defined pedestrian and vehicle entrances and reducing the bulk and scale when viewed from Main Street.

### **2.4.5.2 Height**

The proposed structure meets the objectives and requirements for height limits in the Merimbula Town Centre. The site falls within a 16 metre height limit. The majority of the building is generally well below the maximum height and would be consistent with the building heights of buildings already and currently under construction along Main Street.

### **2.4.5.3 Building form**

When viewed from Main Street, the supermarket would be broken up with an awning and minor variation to wall height at its entrance. When viewed from the proposed new rear access road, the supermarket would be multi storey and contains articulated façade elements due the placement of loading dock areas and change in external colour treatments.

The design when viewed from Main Street reinforces the design principle that the Merimbula town centre is based on a built form that is designed to a lower scale and produces a “Coastal” character unique to Merimbula.

To strength compliance with this design principle, it is recommended that the use of the proposed colour “fluorescent red” in the Main Street elevation be reduced with an additional timber treatment between the entrance and underground carparking. The use of natural timber cladding is considered to be more reflective of the “Coastal” location and is consistent with the adjoining Woolworths store under construction that utilises timber treatments to reduce expansive wall surfaces.

### **2.4.5.4 Public Domain**

The proposed development has considered the public domain and how it functions with the existing environment. It achieves a positive contribution through the following design elements:

- The proposal comprises a designated pedestrian pathway between Main Street and the proposed ALDI Store entry.
- Public art/smaller tree planting can be accommodated along the Main Street frontage area which will make positive visual and interesting contribution to the streetscape. The plans provide a location for an optional public art installation, in accordance with the requirements for Public Art under DCP 2013.
- The proposal will not result in signage cluster. A total of five (5) business identification signs are proposed, including four (4) wall-mounted signs and one (1) pylon sign.
- A total of 89 car parking spaces, including six accessible parking spaces (51 car spaces in the at-grade car park and 38 car spaces in the basement floor) and 8 bicycle parking racks.

- All plant and the lift overrun is incorporated within the architecture of the building and concealed from view.
- The design provides for a new electrical substation at the front of the site fronting Main Street. It is recommended that appropriate screening of the substation be undertaken to mitigate this additional visual element within the streetscape. This would also be offset by the removal of the electricity pole located within Main Street and the associated removal of overhead powerlines.

#### **2.4.5.6 Traffic and access**

The development would include the continuation of a new service road running along the northern boundary of the site to permit service vehicles to access the site via Sapphire Coast Drive and not Main Street, thus removing trucks entering the main central business area of Merimbula. Customer vehicular access would be available through the site, including to the basement parking from both the new service road and Main Street. The applicant has detailed that the expected delivery truck swept paths can enter and exit the site from the Service Road in a forward direction.

### **2.6 General Commercial Development**

#### **2.6.1 – Design**

The design complies with roof and retaining walls/fencing requirements for the precinct. The proposed roof form is consistent with the existing larger retail and commercial buildings' roof forms in the area. Lift runs and equipment are appropriately screened to minimise overall bulk and overshadowing impacts to adjoining properties and public areas.

The application proposes fences along the rear and side boundaries. The applicant has confirmed that fencing along the rear side boundary shared with 99 and 101 Main Street will be fenced. A condition requiring a maximum height of 1.8 metres for the fence to 99 Main Street is recommended.

#### **2.6.2 – Amenity**

The applicant identified that the proposed Main Street setback does not comply with Figure 2.8 of DCP 2013 for the following reasons:

1. To efficiently utilise the sloping topography at the rear of the site by developing a basement car park; and
2. To allow a commercially feasible and efficient floorplate accommodating a five-aisle ALDI Store and associated facilities, which sits above a basement level requiring access from the rear service road.

The non-compliance in this instance can be supported as it is considered that a positive streetscape would be provided to Main Street with improved landscaping and appropriate scale of the building when viewed from Main Street.

Appropriate pedestrian and at grade access for people with a disability can be gained from Main Street and the proposed carparking areas and the development incorporates equitable access for all people.

The proposal has taken into consideration potential traffic conflicts between the pedestrian and vehicular movements by providing separate and designated vehicular and pedestrian egress/ingress points on both Main Street and along the proposed service road.

It is considered that the design of the development is consistent with the existing amenity of Main Street.

### **2.6.3 – Environment**

The building will comply with energy conservation and solar access requirements. The Applicant submitted a Sustainability Design Principles Report prepared by Rothelowman Architects.

The design of the building includes a roof pitch and orientation that will be suitable for the installation of solar collectors in the future.

Landscaping has been provided along the Main Street frontage and along the eastern boundary. The proposed landscaping treatments provide areas for deep soil planting zones to help minimise stormwater runoff and stormwater pollutants. Refer to the submitted landscape plans for details of extent of landscaping.

The landscape plan generally complies with the requirement for all outdoor at-grade car parking areas to be provided with 1 tall branching mature shade tree for every 10 linear car spaces. The landscape plan provides for 9 tall branching mature shade trees in the at-grade car park and is considered to comply with the required number of trees.

The proposed development is accompanied with a waste management plan to ensure waste avoidance, reuse and recycling during the demolition, construction, and operation stages of the development. The proposed ALDI Store is facilitated with a designated bin storage area in the loading dock and is easily accessible for waste collection vehicles using the designated egress/ingress point located at the proposed new service road.

The proposed development provides an integrated system for collecting, controlling and treating stormwater runoff via the use of OSD and stormwater pits/grated drainage devices.

A Soil Erosion and Sediment Control Plan was included with the Civil Engineering Works Plans prepared by Henry and Hymas dated 28 September 2017 and submitted with the development application. The plan satisfies the requirements of this Clause and shall be implemented as a condition of consent.

## **2.7 Specific Requirements**

### **Clause 2.7.1.1 Context and articulation**

The plans propose a colour schedule including the use of “fluorescent red”, “drive time”, and “basalt grey” on all elevations. Concerns were raised with the applicant with the use of “fluorescent red” as possibly being an overt colour for the building and area. The applicant provided a more indicative sample to those submitted with the Architectural Plan report. The proposed colour schedule including the use of fluorescent red is supported.

It is recommended however that the use of the colour “fluorescent red” in the Main Street elevation be reduced with an additional timber treatment between the entrance and underground carparking. The use of natural timber cladding is considered to be more reflective of the “Coastal” location and is consistent with the adjoining Woolworths store under construction that utilises timber treatments to reduce expansive wall surfaces.

A standard condition is recommended requiring all external finishes to be finished in accordance with the submitted schedule except as amended on the Main Street façade to achieve the additional articulation described above.

### **2.7.1.2 Built form**

The proposed structure generally provides for appropriate modulation and articulation in all facades. The size of the structure and setbacks to existing, and under construction buildings, provide well-proportioned elevations when viewed from Main Street. The site slopes down and away to the north and therefore the bulk and scale of the building would be greater

when viewed from Berrambool Oval. The design would be similar to the existing large bulky buildings of Top Fun, Club Sapphire and also the Woolworths building currently under construction, therefore, the proposed building would not be out of scale with existing development.

The proposed loading dock is not directly fronting the service road and is located in a recess along the northern building elevation. It is considered that the building complies with the specific requirements of built form being, to provide buildings and structures that will be appropriately modulated and articulated in their façade and adjoining walls to provide well-proportioned elevations and human scale.

#### **2.7.1.3 Building height**

The building complies with the height limits for the site with a maximum building height of 15.32 metres, being below the maximum permitted height limit of 16 metres.

#### **2.7.1.4 Awnings**

A continuous awning is mounted on the south and west elevations of the proposed ALDI Store to provide weather protection. The proposed awning is considered appropriate for the design of the building and use of the site.

#### **2.7.1.7 Street frontages**

The proposal provides a forecourt in front of the ALDI Store entrance which will be connected to Main Street via a dedicated pedestrian pathway with a clear view line. The design activates the ALDI Store Main Street frontage and allows direct visual and physical contact between the Store and Main street.

#### **2.7.2.1 Views**

Adjoining properties are utilised for commercial purposes with side boundaries constructed of solid brick work with no windows. The proposed building location will not obscure or lead to any detrimental impacts on views and vistas.

#### **2.7.2.2 The public domain**

The proposal ensures there will be a clear boundary between the public and private domains by proposing landscaping and public art within the Main Street setback area to define the boundary.

One (1) pylon sign is proposed along Main Street to show the ALDI Stores standard business text and logo, car park symbol and provide directions for customers to the ALDI Store and basement car park.

The future public art works can be provided and will be designed in accordance with Council's Public Art Policy. Refer to the architectural plan No TP01.04 for details. A condition requiring the provision of a public art is included in the draft conditions of consent.

### **Section 5 General Requirements**

#### **5.2 Non Aboriginal Heritage**

There are no heritage items in the area that would be impacted by the development.

#### **5.3 Access and Mobility**

Clause 5.3 of DCP 2013 requires a Development Application to be accompanied with an Access and Mobility Impact Assessment and an Access Management Plan. ABE Consulting has prepared an Accessibility Review Report addressing development standards for this Clause. The assessment concludes that "the Development Application documentation can readily achieve compliance with the Part D3, Clause E3.6 and Clause F2.4 'deemed-to-satisfy'

(DtS) requirements of the Building Code of Australia 2016 (BCA), The Disability (Access to Premises – Buildings) Standards 2010 and the pertinent Australian Standards.”

The report and recommendations have adequately addressed the provisions of access and mobility for the development required by Clause 5.3.

#### **5.4 Social and Economic Impacts**

The purpose of this section is to ensure the impacts of certain developments on social and economic factors are considered. The Section applies to the following development types: “Commercial development with a gross floor area of more than 1500sqm”. The Gross Floor area of the Supermarket is 1,685.8m<sup>2</sup>.

The applicant, though Deep End Services, prepared a Retail Impact Report for the proposal and the assessment concludes that “the proposed development will not result in significant trading impact or the closure of multiple retailers at Merimbula or other townships for the reasons of its small floorspace, supermarket provision, impacts on larger supermarkets, no speciality shops, redirection of sales within Merimbula, and population growth.”

The findings of the report are supported by Council, with the use consistent with the commercial precinct in which it is proposed to be located and the services it would provide to the residents of Merimbula and surrounding area.

#### **5.5 Sustainable Design Principles**

The applicant identified the following Environmentally Sustainable Development measures in the building design and during operation to reduce energy consumption in accordance with Section 2.6.3.1 and Section 5.5 of DCP 2013:

- Glazing is proposed to the south elevation to provide maximum natural light whilst minimising direct sunlight and the associated heat load.
- Use of high efficiency lighting for the entire building to reduce electricity consumption and air conditioning load.
- Use of entry/exit airlocks within the ALDI Store to minimise air loss and energy consumption.
- Installation of store freezer lids within the ALDI Store to minimise loss of chilled air.
- The landscaped area will incorporate drought resistant native plants.
- Outdoor lighting, signage and external lighting are controlled by automatic time switches and will be switched off during the daylight hours when not required.
- There would be limited lighting outside retail trading hours to prevent overuse and to minimise electricity usage.
- Use of water efficient fittings.
- Dedicated recycling storage area and staff training to advise of proper waste and recycling procedures.
- Installation of stormwater detention and treatment facilities.
- The site is accessible by public transport and the existing bus stop is located on Main Street with direct connection to the proposed ALDI Store via the proposed pedestrian pathway which will minimise dependence on private motor vehicle trips.
- Provision of eight (8) bicycle parking spaces on site encouraging bicycle use as transport.

It is considered that the application has adequately addressed the provisions of Clause 5.5 for sustainable design principles.

#### **5.6 Tree and Vegetation Preservation**

The applicant has provided relevant details for the removal of four trees from the site, and outlined the proposed landscaping of the site. It is noted that some additional tree clearing maybe required from the rear of 99 Main Street as part of the construction process. It is

recommended that conditions be included providing the potential removal of vegetation at the rear of this premises. The development is consistent with this Section.

### **5.8 Planning for Hazards**

The subject site is not considered to be affected by any coastal hazards or flooding. Site contamination has been considered and preliminary assessments undertaken with no hazards identified and the site does not require remediation.

### **5.9 Off-street Car and Bicycle Parking**

For Commercial premises the following parking requirements are needed – Car spaces: 1 parking space per 25m<sup>2</sup> gross floor area ground floor – Bicycle parking: 1 space per 200 sqm of gross floor area for development. The proposed total gross floor area is 1,685.8m<sup>2</sup>. Therefore, a minimum of 67 car parking spaces are required for the supermarket. Bicycle parking racks for 8 bicycles has been provided.

A further 18 car parking spaces are required to be provided on-site for an existing restriction on title for Lot 949 DP 810986 and a further four spaces lost within Main Street for the provision of a Wombat Crossing. The provision of 89 car parking spaces with 51 car spaces in the at grade car park and 38 car spaces in the basement floor and 8 bicycle parking racks ensures compliance with this Clause.

Of the car parking spaces required, a minimum of one accessible parking space is to be provided per development, plus 1 per 25 spaces designed in accordance with the Australian Standard 2890.6. The proposal comprises a total of 89 car parking spaces. Thus, a total of 3.5 accessible car parking spaces are required. The proposal comprises a total of six (6) disabled car parking spaces.

Accessible car parking spaces at the at-grade car park are located immediately to the west and south of the building's main entrance. Accessible car parking spaces at the basement level are located adjacent to the lift lobby, with the shortest travel distance.

The proposal comprises barrier free pathways between the accessible car parking spaces and the ALDI Store entrance, as well as the lift lobby in the basement level and a designated pedestrian pathway providing direct access between the proposed ALDI Store forecourt and the footpath along Main Street is proposed. This pathway would be adequately lit at night. The proposed at-grade car parking spaces line up along this pathway that will be readily accessible to customers.

### **5.11 Signage and Advertising**

The proposed signage is consistent with Section 5.11.1 of DCP 2013. It is considered that the extent of signage proposed for the site is suitable to the site's location within a business zone. The ALDI Store standard logo and text will be shown on four (4) wall-mounted signs and one (1) pylon sign. These signs are modest in scale with a dimension of 2,400mm (h) x 2,000mm (w) and are entirely located within the site boundary and are integrated with the supporting façades and structures.

The proposed signage covering walls are calculated as follows; North and South elevation: Approximately 3.8% of the elevations will be covered by signage, and East and West elevation: Approximately 4.8% of the elevation will be covered by signage.

The applicant has undertaken an assessment of the signage under State Environmental Planning Policy No 64 – Advertising and Signage (SEPP 64) which sets out matters for consideration that must be addressed before the consent authority can approve a development application for any signage.



The assessment concludes that the proposed number of signs is suitable for the scale of the proposed development and the site location and will not create visual clutter when viewed from public vantage points, namely surrounding roads of Main and Market Streets and their adjoining pedestrian sidewalks. The proposed signs would not dominate or detract from the appearance of the new building and other businesses located in the vicinity of the site due to the setback of the building to Main Street. The proposed signage will positively contribute to the character of the Merimbula Town Centre as a major retail centre in the Bega Valley Shire area and be consistent with adjoining commercial and retail premises that retain a range of associated signage in a range of colours. The proposed signs are compatible with the site context.

The proposed signs are to be internally illuminated. The signage proposed is considered to be satisfactory for the scale and type of commercial development. A Condition is recommended to ensure that excessive illumination will not impact on passing traffic nor residences located adjacent or near the site and that the signs are maintained into the future.

## **6 Engineering Requirements**

### **6.1 Roads and Easements**

The application seeks the extension of the proposed new service road along the Northern boundary and provided conceptual plans for its design.

The development application has been assessed by Council's Development Engineer with no concerns identified with the submitted plans. Standard and specific engineering conditions are recommended to ensure the development complies with Councils engineering requirements and specifications.

### **6.2 Parking and Driveways**

The proposed development comprises separate and dedicated vehicular and pedestrian access points at Main Street and along the proposed new service road. The final construction standards for driveways and parking areas will be addressed during the detailed road design and construction phase.

The development application has been assessed by Council's Development Engineer with no concerns identified with the submitted plans. Standard conditions are recommended to ensure that final construction standards for driveways and parking areas are compliant with Council's Development Design and Construction Specifications.

### **6.3 Soil and Stormwater management**

The applicant has provided sediment and erosion control notes and conceptual stormwater management for the site.

The development application has been assessed by Council's Development Engineer with no concerns identified with the submitted plans. Standard conditions are recommended to ensure that final construction standards for driveways and parking areas are compliant with Council's Development Design and Construction Specifications.

## **Clause 8 – Notification and advertising**

The DA was notified in accordance with the provisions of the DCP with one submission received. Issues raised in that submission are detailed below.

**Section 79C (1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into**

There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.

**Section 79C (1)(a)(iv) any matters prescribed by the regulations**

The Regulations contain provisions where demolition works are proposed. The development application will undertake demolition works.

To ensure that demolition works are undertaken in accordance with relevant standards, suitable conditions of consent are proposed.

**Section 79C (1)(b) the likely impacts of the development**

The likely impacts of the proposed development have been considered and discussed in detail under the provisions of Bega Valley Development Control Plan 2013. The application has adequately addressed the potential impacts and it is considered that there are appropriate mitigation measures to address those impacts.

**Section 79C (1)(c) the suitability of the site for development**

**Does the proposal fit the locality?**

It is considered that the proposed development fits the locality. The development application proposes a form of development that is consistent with the adjoining land uses in the B2 zoning of the land. The development application proposes works that provide good design outcomes for the locality.

**Are the site attributes conducive to development?**

As demonstrated in this report, the development site is conducive to the proposed development which would utilise existing services within commercially zoned land, which has been identified for larger bulkier commercial uses.

**Section 79C(1)(d) any submissions made in accordance with this Act or the Regulations?**

The development application was notified in accordance with Council's Notification requirements under DCP 2013 and was placed on exhibition between 8 November 2017 and 22 November 2017 with one public submission received. The submission did not object to the development, however raised issues in relation to the design of the development and those issues are summarized as follows;

1. The depth of up to 6.8 metres of the excavation could affect our building, what measures will be taken to safeguard the integrity of our building.

Comment: The applicant has detailed that prior to commencement of construction, the nominated builder will undertake a dilapidation report on the adjoining neighbours existing buildings. The design for the protection of the structural integrity of all adjoining buildings will be undertaken by the structural engineers for the project. It is recommended that a condition requiring dilapidation reports be undertaken for adjoining premises prior to and on completion of construction works. It is recommended that a further condition requiring any remediation works for damaged items be undertaken by the applicant/owner of the development.

2. If Aldi is to build right up against our building we request that appropriate drainage be installed.

Comment: The applicant identified that the civil engineers drawings which are in accordance with Australian Standards ensures that there will be appropriate drainage installed. These have been reviewed by Council staff and are considered appropriate.

3. That a suitable high wall is constructed between the back of our building and the corner boundary next to our mini golf area. This is required for security and privacy of our patrons. The plans indicate there will be a drive going under the Aldi building which gives us concern in this regard. We are quite prepared to allow the removal of "some" of the trees on our boundary line with our consultation and the developer replace plants and repair any damage to gardens.

Comment: The applicant identified that the eastern boundary will be fenced. Council staff recommend that a 1.8 metre high fence be erected and this is included as a condition in the draft consent.

4. We have, on our roof, approximately 100 solar panels. We are concerned that the proposed building may shade these panels at certain times of the day and certain times of the year. As we went to a lot of expense with the installation of these panels we request that the council look closely to ensure that the shade does not cover the solar panels at any time.

Comment: The applicant provided shadow diagrams as a part of the development application. A review of the plans indicate that the roof of Top Fun would not be overshadowed between the hours of 9am to 3pm (winter solstice) which is the standard under DCP 2013.

5. Car Parking. We ask that the Council look closely at the car parking requirements for this development. As discussed in our meeting there are 43 car parking spaces that are existing on this parcel of land. Michael Britten did this car park as a trade-off for his development in Merimbula Drive some years ago. We believe these spaces should not be counted in the proposed development.

Comment: There is a restriction on the title of Lot 949 DP810986 requiring the provision of 18 public car parking spaces to be provided on the land, not 43. The site currently does retain approximately 43 with many spaces non-compliant due to the slope of the land.

The proposed development has been assessed in accordance with DCP 2013 and the application has maintained the 18 car spaces required by the existing restriction on the title of Lot 949 DP810986, on top of the required 67 car spaces required for the supermarket and the four on-street parking spaces that would be lost with the creation of the wombat crossing in Main Street. The development is consistent with the parking requirements required under Bega Valley DCP 2013 and the existing restriction on the title of Lot 949 DP810986.

6. Possibility of the Council to consider and utilise some of the area around the service road which is being used by Woolworths and the Aldi development to install extra car parking at that level which, in our opinion, could be used by staff at both facilities. These carparks to have unrestricted times to allow staff to park away from the public carparks or under both buildings leaving more space for customers. As Merimbula suffers from shortage of car spaces we believe this is a good idea. These proposed spots could be sign posted for "staff only".

Comment: This is not a consideration of this application.

The above matters were further clarified with the persons who lodged the submission including recommended conditions for dilapidation reports before and after construction works commence, the provision of carparking for the development, and overshadowing. Following those discussions, they raised no further concerns to their original submission and provided further comments in relation to the potential loss of vegetation and fencing as detailed below;

“1. We have no concerns regarding loss of trees along our boundary but is there some sort of recompense with regards to replanting to cover wall?

2. The wall along our boundary as long as it was high enough and gave our patrons some privacy, i.e., a wall high enough for security and not able to be seen through, such as brick or some like material. There is still no assurance what material is going to be.

Those were our main concerns, also was there going to be interruption to our patrons being able to play golf at any time due to building along said wall along our boundary.”

Comment: It is recommended that conditions be included in regards to the removal of trees from 99 Main Street and the provision of fencing with their property. As detailed in their original submission, they did not object to the development. It is considered that the concerns raised in their submission have been adequately addressed in this report and with the imposition of conditions in the draft consent.

#### **NSW DPI Office of Water**

The application was integrated with the NSW DPI Office of Water as works were within 40 metres of Merimbula Creek and therefore triggered approval under the Water management Act 2000. The Office of Water provided their General terms of Approval and are required to be condition of consent.

The Office of Water made two further comments on the proposal, the first requiring that the service road identified on the plans should be limited to ensure that there are no further works are required within the 40 metre buffer. It is recommended that a condition be placed on the approval limiting the extent of the proposed service road.

The second comment was that the riparian corridor along Merimbula Creek adjoining the proposed service road be enhanced to offset the encroachments into the Merimbula Creek corridor in accordance with the DPI Water Riparian Corridor Guidelines. Rehabilitation works should include the suitable revegetation of the service road embankment to replace the existing vegetation that will need to be removed and to compliment the adjoining riparian corridor. It is recommended that a condition be placed requiring the rehabilitation of the Merimbula Creek riparian corridor including the service road embankment.

#### **Internal Council Referrals**

##### **Environmental Services**

The site contains three native trees. One of which contains large hollows. The proposed development bridges the ridge which drains into both Back Lake and Merimbula Lake. Merimbula Lake is an important oyster growing estuary. Soils in this area are highly dispersant, ensuring appropriate soil and water mitigation measures are implemented is a priority.

Recommend standard conditions be applied relating to; Stabilised access to construction site; the management of stormwater; and erosion and sedimentation controls.

##### **Development Engineering**

The following comments were provided by the Development Engineer in relation to the development,

“The existing layback crossover is approximately 9m wide with a small section of upright kerb in the middle. The crossover is in poor condition and will require replacement as part of this development. Access from Main St will be left in/ left out for cars only, no service vehicles. Table 3.2 in AS2890.1 (Parking Facilities – Off St Parking) recommends an entry width of 6.0m for this class of parking facility and number of spaces (3A and 89). Therefore a 6.5m wide access tapering into a 9m wide driveway (as proposed) is adequate.

Access for service vehicles and an alternate access to the underground and above ground car parks will be from the rear service road. The rear service road is currently under construction and terminates at the eastern boundary of Lot 21 DP1231850 (Woolworths). As part of this development ALDI will be required to extend the service road to the frontage of their development. The standard of the rear service road will be as per the requirements of the western section of the service road (Woolworths and Bowling Club) which is generally:

- 6.8m wide road pavement (lip to lip of gutter, trafficable lane width of 3.85m)
- Sealed pavement
- 1.8m wide concrete footpath on the south side of the service road
- Associated works

The applicant has provided a concept design of the service road. Pavement design options have been provided in the geotechnical report (Aitken Rowe 29/09/17). Pavement design 1 and 2 are acceptable subject to tie in with western section of service road 2. The proposed pavement design for the internal carpark (including onsite testing results) of which I believe is appropriate.

The Transport and Utilities Group have requested a service track to facilitate access to the toe of the proposed batter of the service road, this will be a gravel track coming off the end of the service road. It will be closed to the public by a locked gate which will also act to terminate the road.

Some construction activity may encroach onto waterfront land, as defined under the Water Management Act. This will need a separate approval from the relevant authority, if required. The geotechnical report recommended maximum fill batters of 1V:2H which is consistent with concept civil drawings. Guard rails will need to be installed. Given the steep existing slope some detail should be included on the construction drawings about construction methodology, i.e. terracing the slope.

Access into the property from the service road is proposed to be via a 6m wide driveway (tapering to 12m at the road) at the eastern end for light vehicles. Another 12m wide access (at the road) is proposed for service vehicles to access the loading dock. Detailed turning path analysis has been provided to show that access to the loading dock via ALDI's standard delivery truck can be achieved. The width of the proposed light vehicle access is sufficient as per AS2890.1

The traffic impact assessment (September 2017 by Christopher Hallam) considered the existing traffic movements within Main St, Market St and Sapphire Coast Drive. It also considered the impact of the proposed development on these movements. Conclusions from the report were:

- Traffic impacts on the surrounding road networks from the ALDI development were analysed, resulted in acceptable queue times and are therefore satisfactory.
- Car parking provisions meet the requirements of the DCP and the configuration of the proposed car parks is satisfactory under AS2890.1.

I reviewed the report and agree with the methodology and conclusions. I note that the rationale of determining the existing traffic counts may have underestimated them, however I don't believe this would have altered the conclusions of the report."

#### **Water and Sewer**

No concerns were raised. Standard conditions relating to the protection of Council's existing water and sewer assets, hydraulic engineer's report for internal plumbing and firefighting pressure, liquid trade waste and water supply design and construction.

#### **Building Services**

No concerns were raised with the development application except; for a possible design issue with the pump room which details 2 exits shown and not being supportive of the 24/7 deliveries.

They noted that the exit on the north elevation is blocked by an accessible ramp, the landing at the change of direction is 1.3 metres and an obstruction to the functioning and egress from the shown fire exit, it will require an alternate location for a clear 2 metre head height. This matter will be subject to final construction design with opportunities available to correct this issue.

Building services were not supportive for the delivery hours on a 24/7 basis based on Council receiving previous complaints for the existing Woolworths site opposite with truck and forklift deliveries outside of "prescribed hours".

The development application was accompanied by an Operation Noise Impact Assessment by Wilkinson Murray Noise consultants.

That report detailed that the proposed operational noise would not impact on the nearest affected residences through the operation of the site including the 24/7 delivery operations. The assessment was undertaken having regard to the Industrial Noise Policy and demonstrated that the Operational Noise Assessment and Sleep Disturbance Assessment were compliant.

To ensure compliance with the recommendations in the Noise Report being complaint with the Industrial Noise Guidelines, it is recommended that a condition be included requiring monitoring of the site for compliance.

Standard building conditions have been identified relating to demolition and construction requirements of the development.

#### **Section 79C(1)(e) the public interest**

The proposed development will be in the wider public interest with provision of additional investment and employment opportunities in the region, broadening retail choice and strengthening competition. The development would not compromise the existing retail hierarchy or viability of the Merimbula CBD.

The proposed development satisfies relevant planning controls and is considered to be in the wider public interest. The development application provides a development that is consistent with the zoning of the land, DCP 2013 and existing development in the Merimbula CBD.

#### **Section 94 and 94A Development Contributions Plan 2014**

The development will be subject to Bega Valley's Section 94A Development Contributions as it is a commercial development. As the calculated Construction costs are in excess of

\$200,000, it will be levied at 1%. A condition of consent requiring the payment 1% construction costs is recommended and is detailed in the attached draft consent with recommended conditions (refer to Appendix 1)

## **2. Conclusion**

A detailed assessment has been undertaken of the development application being for the demolition of existing structures and the construction of a Supermarket comprising an ALDI Store with associated car parking, loading dock and the construction of a new service road.

Council staff are supportive of the proposed development and have prepared a draft consent with recommended conditions (refer to Appendix 1).

## **3. Recommendation**

In considering the development application, an assessment has determined that the proposal is consistent with the provisions of BVLEP 2013, DCP2013 and relevant state legislation.

Accordingly, Bega Valley Shire Council as the assessment authority recommends Development Application No. 2017.421 be approved subject to the conditions of consent as detailed in Appendix 1.