

7 June 2018

Mark Fowler
Development Control Planner
Bega Valley Shire Council
PO Box 492
Bega NSW 2550

Attention: **Keith Tull, Manager Planning Services**

Dear Mark

**COMMENTS ON DRAFT DEVELOPMENT CONSENT CONDITIONS
PROPOSED ALDI STORE (APPLICATION NO: 2017.421)
103 AND 105-107 MAIN STREET, MERIMBULA (LOT 946 DP604076, LOT 949 DP810986)**

Milestone (AUST) Pty Limited (Milestone) has prepared this Review of the Draft Development Consent (Application No: 2017.421) on behalf of ALDI Stores (A Limited Partnership) (ALDI). We refer to the draft Development Consent issued by Bega Valley Shire Council (Council) provided to Milestone via email on 1 June 2018.

We respectfully request your consideration of our recommendations in relation to the following draft conditions to streamline the approval process and to avoid further modification applications being lodged to Council. This will ensure the approved development can be delivered to the community without unnecessary delays. For consistency it is also requested that all references are for the "Developer" to deliver the condition requirements. The current draft consent notice references many terms including Developer, Applicant, and Proponent.

Condition 7 and 86 – Parking

Condition 7 states:

A minimum of 89 off street car parking spaces shall be provided in accordance with Council's Development Control Plan 7 : Parking. Details of the final parking layout including surface paving and drainage details must be submitted for approval of Council prior to issue of the Construction Certificate by the Principal Certifying Authority.

Note: The 89 spaces required for carparking spaces comprise:

- 67 spaces for supermarket development
- 18 to satisfy the restriction as to user denoted on Lot 989 DP 810986.
- 4 spaces to meet the loss of on-street parking in Main Street.

The note in relation to the '4 spaces to meet the loss of on-street parking in Main Street' contradicts the contract of sale for the subject land. We therefore request the notes be deleted from Condition 7. We also request this same revision is also accommodated within Condition 86.

We note that the proposal provides a total of 89 car parking spaces including 6 accessible parking spaces which exceeds Council's DCP requirement for parking. It is unreasonable to request inclusion of 4 car spaces on title for the loss of on-street car parking in Main Street when the subject site is providing well above the DCP 2013 requirement for car parking.

Condition 9 – Colour/Materials Schedule

Condition 9 states:

The development shall be finished in accordance with the approved colours and building materials schedule, with the exception of the façade facing Main Street which shall be amended as highlighted on the approved plans to include an external timber cladding treatment to reduce the extent of the colour florescent red.

A national approved design is employed around Australia for ALDI buildings and it is important this is upheld. It is therefore requested this condition is revised to request an alternative design option to be investigated by ALDI to introduce features of timber cladding in the Main Street building elevation. The final façade design must be managed and approved by ALDI to maintain design standards in consultation with Council Officers.

Condition 11 – Monetary Contributions

Condition 11 states:

Payment to Council of the following contributions pursuant to Section 94 or 94A of the Environmental Planning and Assessment Act and Bega Valley Section 94 and 94A Contributions Plan 2014.

<i>Contribution type</i>	<i>\$Total</i>	<i>Allocation No.</i>
<i>Section 94A Contribution</i>	<i>\$76,203.27</i>	<i>W5307.1651.1416</i>

Indexation: Where the monetary contribution is not paid before the first anniversary of the date of this development consent, the contribution amount must be indexed between the date of the consent and the date of payment, in accordance with annual movements in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Time for payment: Deferred payments of contributions may be accepted in certain circumstances and will need to be secured by bank guarantee. Refer to the contributions plan for Council's policy on deferred payments.

Section 1.1 of the Bega Valley Section 94 and 94A Contributions Plan 2014 (the Contributions Plan 2014) states as follows:

This plan does not preclude the consent authority from entering into a planning agreement with the applicant for works in kind, material public benefit, dedication of land and/or deferred payment arrangement in lieu of the payment of section 94 or 94A contributions.

Section 2.12 of the Contributions Plan 2014 states:

A developer's request for variation to a contribution calculated in accordance with this Plan must be supported by written justification included with the development application. Such request will be considered as part of the assessment of the application.

ALDI is proposing construction of a new service road outside the site boundary that will also benefit the Merimbula community. Based on the cost estimate provided by Donald Cant Watts Corke (dated June 2017), the estimated construction cost of the new service road is \$173,705 (refer to the Section 11 Cost Estimate of the Cost Plan prepared by Donald Cant Watts Corke, dated June 2017).

Besides the above works, ALDI is also required to install street lighting for the new service road and to carry out significant upgrade works to Main Street as addressed within the draft Development Consent in the following conditions:

- Condition 16 : Lighting system;
- Condition 20 : New Street Trees;
- Condition 59 : Roadworks;
- Condition 60: Reconstruction of footpath area;
- Condition 61: Concrete footpath crossing;
- Condition 62: Raised median strip;
- Condition 63: Pedestrian crossing on Main Street;
- Condition 64: Full construction of new urban street;
- Condition 65: Concrete Footpath crossing; and
- Condition 67: Maintenance Access Tracks.

The proposed new service road and upgrade works to Main Street comprise a significant material public benefit in terms of improving access to the B2 Local Centre zoned land for both pedestrians and vehicles. The proposed Main Street upgrade

works will also improve access to commercial and retail uses in the wider area within the Merimbula Town Centre. On this basis, the proposed works package represents a significant positive benefit to the public.

It is considered unreasonable that ALDI should be required to meet both the cost of proposed works to Main Street and the contribution of \$76,203.27 required under the draft Condition 11. We therefore request that Council acknowledges the significant material public benefit being undertaken by ALDI Store to improve the local road network and subsequently removes the requirement of the monetary development contribution.

Condition 13 – Public Art

ALDI acknowledge the benefit of public art to Merimbula Town Centre. It is requested that Condition 13 be revised to enable the payment of a monetary contribution in lieu of the co-ordination and provision of Public Art in accordance with Bega Valley Shire Council Procedure 1.03.1 Public Art. The monetary contribution shall be provided prior to the issue of an occupation certificate. We consider that Council is best placed to commission a local artist and manage this process rather than ALDI.

Condition 14 – Substation Treatment

ALDI's electrical consultant advised that the surface of an easement around a padmount substation can be finished with a material that can be easily removed and restored such as grass, wood chips and gravel. According to the Energy Authority guidelines, vegetation cannot be planted in close proximity to padmount substations that may restrict access for operation and maintenance. For safety and maintenance reasons there are restrictions regarding the form of building and use of metal fences etc. in proximity of substations as it is controlled by the electricity authority.

Accordingly we request this condition be deleted or modified so as not to be binding should the proposal be rejected by the electrical authority.

Condition 18 – Fencing

Condition 18 states:

18 *Fencing alongside boundary*

The property shall be fenced at the developer's cost along the side boundary with 99 Main Street, Merimbula using materials that complement the proposed development. Details of the fencing are to be submitted to the owners of 99 Main Street, Merimbula and Council for approval prior to the issue of a construction certificate.

There is no objection to fencing being provided at ALDI's cost along the site's side boundary with 99 Main Street, Merimbula. Galvanised steel picket fencing that complements the proposed development or the replacement of the existing chain-link type fencing will be proposed. We request that the details of the fencing is provided to Council only. Council can then undertake any consultation if required or notify the property owner of 99 Main Street.

It is recommended that 'to the owners of 99 Main Street, Merimbula' be deleted from condition 18.

Condition 19 – Vegetation remove/trim

Condition 19 states:

19 The applicant shall remove/trim only those trees/vegetation from 99 Main Street, Merimbula that would impede the construction of the supermarket. The developer shall only undertake the removal /trimming at a suitable time agreed to by the owner of 99 Main Street. The developer shall replant the same number of trees/vegetation that were required to be removed and shall be of the species agreed to by the owners of 99 Main Street. All works shall be completed prior to the issue of an Occupation Certificate.

It is requested that the new species are referenced as nominated species in Council's DCP or approved by Council's Landscape Architect rather than 'agreed by the owners of 99 Main Street'. This will ensure Council attains suitable tree planting species across the Town Centre. Further it is requested that ALDI provide prior written notice of when the removal or trimming of trees will occur rather than undertake this work "at a suitable time agreed to by the owner of 99 Main Street". Written notice only is considered reasonable and is consistent with construction work procedures.

Condition 23 – Excess Fill

Condition 23 states:

23 Excess fill to be deposited at approved site

Any excess fill arising from the proposed development shall be deposited at a Council approved site. Notification and prior arrangement to this Council approved site may be required prior to any fill being deposited. The details of the composition and volume of the fill and the site of disposal are to be forwarded to Council.

The proposal includes backfilling of the fill arising from the proposed excavation and earthworks for the construction of the new service road. To be in line with the proposal, we seek to modify the above condition as follows:

23 Excess fill

Any excess fill arising from the proposed development shall be deposited for the purpose of construction of the new service road. The details of the composition and volume of the fill are to be forwarded to Council.'

Conditions 28, 78 and 79 – Food Premises

Unlike other major retailers, ALDI Stores do not include kitchens, delicatessens, bakeries, or the like where fresh food is processed for sale on the premises. The majority of goods are pre-packaged at the ALDI Warehouse and Distribution Centre in Prestons. The proposed ALDI Store, therefore, is not defined as a food premise. These conditions are not relevant to the proposed ALDI Store and we request it be removed.

Condition 57 – Traffic Control Plan

Condition 57 states:

57 Traffic Control Plan

No work shall be carried out within three metres of the carriageway of a public road subject to motor vehicle traffic until Council has sighted a satisfactory Traffic Control Plan relating to that work, and the relevant Roads Authority has issued any associated Roadworks Speed Limit.

The Traffic Control Plan shall be prepared by a person who is authorised by the Roads and Maritime Services to prepare these plans. Evidence of Traffic Control at Worksites Certification must be submitted with the Traffic Control Plan.

All measures described in the Traffic Control Plan shall be implemented and maintained for the duration of any work within/adjacent to the road carriageway.

The site boundary is 5 metres from the carriageway of Main Street. Therefore, the construction works are able to comply with the Condition 57.

Condition 68 - Parking Capacity Signage

Condition 68 states:

68 The applicant shall install Electronic Parking Capacity Indicator Signs at the entrances of all car parking areas from public roads. Their placement shall be approved by Council before the issue of a Construction Certificate.

This requirement is unreasonable for a development of this size and this condition should be deleted. ALDI operates all of its car parks successfully in both metropolitan and regional areas without such electronic signage.

Condition 75 - Landscaping Reports

Condition 75 b) requires that the same individual or company who undertook the approved landscape design must prepare the required landscape maintenance report. We request that this part of the condition is deleted so that ALDI has the option to employ a local landscape architect to complete this requirement rather than be forced to fly down a Sydney based consultant to Merimbula . This will also encourage local employment from the Merimbula area.

Condition 88

88 The operator shall provide Council with a noise verification report within 3 months after occupation of the supermarket and then quarterly for the remainder of a year to establish that the predicted noise levels specified in the Wilkinson Murray's noise report No. 99201-M3, version A, dated September 2017 is accurate. Verification of the noise levels shall be:

- By means of attended measurements at the street boundary of the identified residential premises;
- Of a 15 minute duration, a minimum of 3 samples during night time (10pm-7am), with a minimum of one before midnight and one after.
- Taken on 3 days of the same week when deliveries are being conducted, at least two of the days is to include the largest delivery vehicle being used. The size and description of the delivery vehicles are to be noted.

These reports shall be prepared by an appropriately qualified acoustic consultant, who is a member of the Australian Acoustical Association, at the operator's cost, and submitted to Council within 14 days of the end of each specified monitoring period.

Should these reports demonstrate that the noise levels specified in the noise report cannot be reliably met, deliveries will be restricted to 7am – 10pm only.

Wilkinson Murray reviewed the above condition and concluded that Condition 88 is only required:

- To validate the noise impacts presented in the NVIA, particularly with respect to night time truck deliveries, via attended noise measurements; and
- To ensure the worst-case scenario of noise impacts is tested.

However, due to the relatively short distances to the most potentially affected receivers, meteorological enhancement of noise is not expected to be significant. A more reasonable approach would be to conduct a single round of compliance monitoring and no further monitoring would be warranted.

We therefore seek to modify Condition 88 as follows:

The operator shall provide Council with a noise verification report within three months of occupation of the supermarket to demonstrate compliance with the operational noise criteria established in Wilkinson Murray report No. 99201-M3, dated September 2017 (Wilkinson Murray, 2017). Verification of the noise levels shall be:

- By means of attended noise measurements at the residential receivers identified in Wilkinson Murray 2017, conducted in general accordance with the NSW Industrial Noise Policy;
- Conducted using the noisiest delivery vehicles, with noise levels from arrival/departure and unloading activities measured at each receiver location.

These reports shall be prepared by an appropriately qualified acoustic consultant, who is a member of the Australian Acoustical Association, at the operators cost, and submitted to Council within 14 days of the end of each specified monitoring period.

Should the measured noise levels comply with the criteria specified in Wilkinson Murray 2017 by less than 3 dBA, the noise monitoring should be repeated in three months, with a maximum of four rounds of attended noise monitoring to be conducted.

Should these reports demonstrate that the noise criteria specified in Wilkinson Murray 2017 cannot be reliably met, deliveries will be restricted to 7am – 10pm only.

Should you require further clarification regarding this matter, please do not hesitate to contact the undersigned.

Yours sincerely

Milestone (AUST) Pty Limited



Lisa Bella Esposito
Director