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Ref:

Southern JRPP

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Dear Southern JRPP

***Development application 2017.421 – Merimbula Aldi – Response to draft conditions of consent***

Please find below Council's response to the draft conditions of consent submitted by the applicant for the JRPP determination meeting.

Regards

Mark Fowler  
Town Planner

**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 is to detail how the required carparking for the development was calculated. The calculations were based on the provisions of Development Control Plan 2013, restrict on title and the loss of 4 spaces in Main Street.

The condition does not contradict any information that is detailed in the Section 79C assessment and it is to clearly stipulate how the 89 off street carparking spaces were calculated for this development.

Council recommends that this condition not be amended.

#### **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.”*

The condition has been included to reflect the Desired Future Character Statement for the Merimbula’s Commercial area as detailed under Bega Valley Development Control Plan 2013. The external treatment does not affect in any way the external and internal design layout of the building except for a minor façade treatment to the Main Street road frontage. This would ensure that the development is consistent for its location and adjoining buildings including those currently under Construction, namely the Merimbula Woolworths Supermarket.

Council recommends that this condition not be amended.

#### **Condition 11 – Monetary Contributions**

Condition 11 states;

| <i>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. 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> |

The condition is in accordance with Council’s adopted Section 94 & 94A Contribution Plan. The application did not seek a planning agreement at lodgement of the application 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.

The works listed are required to meet the operation needs of the development.

A review of the Conditions in their submission for the provision of services requirements including lighting system, new street trees, roadworks including the extension of the service road are all to meet the operational impacts this development would have on the site and infrastructure needs to meet this development. Not a general public benefit to the community.

It is recommended that this condition not be amended.

#### **Condition 13 – Public Art**

Condition 13 states;

*“For the purpose of satisfying Clause 2.7.2.2 of the Bega Valley Development Control Plan 2013 the developer shall provide a public art work in Merimbula. Prior to the issue of a Construction Certificate details shall be submitted to Council, in accordance with Councils Public Art Procedure 1.03.1, for Council approval. In preparing the proposal, consultation shall be undertaken with Council’s Community and Cultural Assets Section regarding the location, design integration, artist selection, themes, content and other details of the proposed public art works.*

*The approved Public Art shall be installed prior to the issue of an Occupation Certificate.”*

ALDI acknowledge the benefit of public art to Merimbula Town Centre and request 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 is noted. The monetary contribution shall be provided prior to the issue of an occupation certificate.

A review of the above comments indicates that the provision of Public Art is still to be provided and accept the applicants request for payment. No discussions have been made on an agreed amount in lieu of public art. Council would accept the condition to be modified that a monetary contribution shall be provided prior to the issue of an occupation certificate subject to agreement with Bega Valley Shire Council.

#### **Condition 14 – Substation Treatment**

Condition 14 states;

*“The applicant shall provide an appropriate screening treatment to the electricity substation from Main Street. Details of the proposed screening treatment shall be lodged with Council for approval prior to the issue of a Construction Certificate.”*

The intent of the condition was to mitigate the visual impact of a new substation when viewed from Main Street. It is recommended that the condition not be amended as the applicant has not made any approaches to the electricity provider having regards to possible screening treatments. Given that the location of the substation could be further setback into the front garden bed detailed on the recommended approved plans, could help to accommodate the appropriate screening of this structure.

It is recommended that this condition not be amended.

#### **Condition 18 – Fencing**

Condition 18 states:

***“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.”*

Council has reviewed this condition and support the removal of the wording associated with the owners of 99 Main Street, Merimbula from condition 18.

**Condition 19 – Vegetation remove/trim**

Condition 19 states:

*“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.”*

Council support the removal of the reference to 99 Main Street and replacement with wording identified by the applicant.

**Condition 23 – Excess Fill**

Condition 23 states:

*“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 condition is reflective of the overall development including the construction of the rear Service Road. The condition is to ensure that if there any excess fill from the site is not required for the overall development including the rear service road, then it would be suitably located.

It is recommended that this condition not be amended.

**Conditions 28, 78 and 79 – Food Premises**

Condition 28 states:

***“Food Premises General***

*The construction and operation of the food premises shall comply with all applicable legislation/regulation and standards including:*

- *The Food Act 2003*
- *Food Regulation 2015*
- *Food Standards Australia and New Zealand – Food Standards Code 2001*
- *AS 4674- 2004 Australian Standards for Design, Construction and Fit out of Food Premises*
- *Mechanical ventilation – Australian Standard 1668.2-2012”*

Condition 78 and 79 state;

***“Food premises – final inspection***

*The food premises shall be inspected by Council’s Environmental Health Officer to determine compliance with applicable food legislation.”*

***“Food shop registration requirements***

*Occupation of the premises shall not occur until:*

- a) a registration form has been submitted to Council for the food premises; and*
- b) notification to Council under Food Safety Standard 3.2.2 Division 2 Section 4 Notification.*

*This requirement is to be met by notifying through the following website:*

*[www.begaValley.nsw.gov.au](http://www.begaValley.nsw.gov.au)*

*Evidence of compliance of the above shall be submitted to Council prior to occupation and/or commencement of business.”*

These conditions are standard Council conditions as the premises will be supplying various food products, including cold storage items and fruit and vegetables and the storing of these items need to be undertaken in accordance with the provisions of the Food Act. The conditions are to ensure that the fitout and operation of the supermarket complies with the relevant provisions of the Food Act.

It is recommended that this condition not be amended.

**Condition 57 - Traffic Control Plan**

No concerns were raised in respect to its retention and is a standard condition of Council. It is recommended that this condition not be amended.

**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 condition is to provide additional directional traffic management for the premises and surrounding Merimbula business area. The population of Merimbula increases three fold during peak holiday periods and the electronic parking capacity indicators would improve vehicular movements to the site.

It is recommended that this condition not be amended.

**Condition 75 - Landscaping Reports**

Condition 75 b) states;

*“Maintenance Report*

*On the first anniversary of the date of the Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Bega Valley Shire Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.*

*The same individual or company who undertook the approved landscape design must prepare this report.”*

This is a standard Council condition and relates to reporting purposes, not inspection requirements. It is to ensure that the individual or company who undertook the original landscape design for the development is followed through to a one year anniversary.

It is recommended that this condition not be amended.

#### **Condition 88**

Condition 88 states:

*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.*

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

Council has reviewed the request and consider that the condition should remain unchanged except for “and then quarterly for the remainder of a year” being deleted. Testing over 3 nights is to provide a range of appropriate weather conditions and other external factors to properly validate the operations of the deliveries.