

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	Thursday, 28 June 2018
PANEL MEMBERS	Pam Allan (Chair), Alison McCabe, Renata Brooks, Lindsay Usher
APOLOGIES	Rob Pollock
DECLARATIONS OF INTEREST	None

Public meeting held at Bega Valley Regional Learning Centre and at Kiama Council, 11 Manning St, Kiama with teleconference between the two, on 28 June 2018, opened at 9.50am and closed at 10.25am.

In attendance at Kiama: Pam Allan (Chair), Alison McCabe, Renata Brooks, Mark Fowler (Bega Valley Shire Council) and John Harris (Applicant).

In attendance via telephone: Lindsay Usher.

In attendance at Bega Valley Regional Learning Centre: Keith Tull (Bega Valley Shire Council).

Lindsay Usher left the meeting at 10.03am.

MATTER DETERMINED

2017STH028– Bega Valley– DA2017.421 at 103 & 105-107 Main St, Merimbula (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel reviewed a submission from the applicant regarding changes to the draft conditions.

The Panel determined to approve the development application pursuant to section 4.16 (previously section 80) of the *Environmental Planning and Assessment Act 1979* subject to the conditions in the report as modified as follows:

- Not approve the submitted land scape plan and provide a condition advising that, “A revised landscape plan that provides additional landscaping to the Main Street carpark be submitted to and approved by Council.”
- Amend Condition 20 to include the planting of two street trees in Main Street and to read; “The applicant shall plant four street trees within the road reserve of the new service road and two trees within the Main Street footpath. The species are to be endemic species and have a growing height of 10 to 20 metres. The street tree placement shall be in consultation with Council’s Strategy and Asset Services Manager.”
- Amend Condition 13 to read; “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 or provide a monetary payment in lieu for the provision of public artwork. Prior to the issue of a Construction Certificate, details shall be submitted to Council, in accordance with Councils Public Art Procedure 1.03. for Council approval or alternatively an agreement reached for the payment of a monetary contribution. 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.”

- Amend Condition 18 to read;
“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 Council for approval prior to the issue of a construction certificate.”
- Amend condition19 to read;
“The applicant shall remove/trim only those trees/vegetation from 99 Main Street, Merimbula that would impede the construction of the supermarket. The applicant shall provide Council with prior written notice of when the removal or trimming of trees will occur on adjoining property. The developer shall replant the same number of trees/vegetation that were required to be removed and shall be of the species as nominated in Council’s DCP2013. All works shall be completed prior to the issue of an Occupation Certificate.”
- Amend Condition 88 to read;
“The operator shall provide Council with a noise verification report within 3 months after occupation of the supermarket to establish that the predicted noise levels specified in the Wilkinson Murray’s noise report No. 99201-M3, version A, dated September 2017 and with the provisions of the Industrial Noise Guidelines 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 decision was Unanimous (4:0).

REASONS FOR THE DECISION

- The development is consistent with Bega Valley LEP 2013 and DCP 2013.
- The development has been assessed relative to the statutory planning provisions applicable to the site and found to be appropriate.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report amended as outlined above.

PANEL MEMBERS	
 Pam Allan (Chair)	 Alison McCabe
 Renata Brooks	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017STH028– Bega Valley– DA2017.421
2	PROPOSED DEVELOPMENT	Retail premises - supermarket
3	STREET ADDRESS	103 & 105-107 Main St, Merimbula
4	APPLICANT/OWNER	Bega Valley Shire Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ State Environmental Planning Policy No 55 – Remediation of land ○ State Environmental Planning Policy No 64 – Advertising and Signage ○ State Environmental Planning Policy No 71 Coastal Protection ○ Bega Valley Local Environmental Plan 2013 • Draft environmental planning instruments: Draft Coastal Management SEPP • Development control plans: <ul style="list-style-type: none"> ○ Bega Valley Development Control Plan 2013 ○ Section 94 and 94A Development Contributions Plan 2014 • Planning agreements: Nil • Provisions of the Environmental Planning and Assessment Regulation 2000: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the Environmental Planning and Assessment Act 1979 or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 1 June 2017 • Written submissions during public exhibition: one (1) • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ On behalf of the applicant – [John Harris] • Written submission from applicant regarding conditions • Council’s response to applicants request to alter conditions
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection and briefing meeting 6 February 2018 • Final briefing meeting to discuss council’s recommendation, 28 June 2018. Attendees: <ul style="list-style-type: none"> ○ Panel members: Pam Allan (Chair), Alison McCabe, Renata Brooks, Lindsay Usher, Rob Pollock ○ Council assessment staff: Mark Fowler, Keith Tull and Rob Slapp
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report