

29 August 2018

Mr Mark Ferguson
General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Mr Rodney Piggot – Planning Manager

Dear Mr Ferguson,

**SECTION 4.55(2) MODIFICATION APPLICATION TO AMEND DA NO. 300/2016 TO EXTEND THE DELIVERY HOURS FOR THE APPROVED ALDI STORE
22-26 ROSEBERRY STREET, BALGOWLAH (LOT 10 DP 1233834)**

We refer to the above site and submit a Section 4.55(2) Modification Application to Northern Beaches Council (Council) for extended delivery hours for the approved ALDI Store located at 22-26 Rosebery Street, Balgowlah (Lot 10 DP 1233834). The approved delivery hours for the site are as follows:

- Monday – Saturday: 6.00am – 8.00pm
- Sundays and Public Holidays: 8.00am – 8.00pm

This Section 4.55 (2) Modification Application seeks to amend Condition No. 59 of Development Consent No. 300/2016 to extend the delivery hours of the ALDI Store to be as follows:

- 24 hours Monday to Sunday including public holidays.

This Modification Application has been prepared for the owner and operator of the tenancy, ALDI Stores (A Limited Partnership) (ALDI) by Milestone (AUST) Pty Limited.

Please find enclosed the following Modification Application documents for Council's assessment:

- Completed Application Form (1 copy).
- Land Owner Consent to lodge the Modification Application (1 copy).
- Cheque payable to Council for \$4,003.25 (in accordance with fee estimate provided by Yuan Zhang, Duty Officer Development Assessment on 14 August 2018).
- This Statement of Environmental Effects Letter (1 copy) comprising:
 - Revised Noise Assessment Report prepared by Wilkinson Murray Pty Limited dated June 2018 (**Appendix A**).
 - Plan of Management for ALDI Truck Deliveries prepared by Milestone (**Appendix B**).
 - Development Consent Application No. 300/2016 (**Appendix C**).
 - Council's Notice of Determination, reference No. 2018/314427, dated 16 May 2018 (**Appendix D**).
- 1 x USB containing the above supporting documentation.

STATEMENT OF ENVIRONMENTAL EFFECTS

1. BACKGROUND

1.1 Site Description

The site is located at 22-26 Roseberry Street, Balgowlah and comprises three separate lots legally described as Lot 10 DP 1233834. The site is rectangular and has a total area of 3,547.1m² with a frontage to Roseberry Street and rear boundary of 44.49m and side boundaries of 79.75m (refer to **Figure 1**).

Existing on the site is a two storey building occupied by commercial and health and fitness related uses. The site is not identified as a Heritage Item nor is it located within a Heritage Conservation Area within Manly Local Environmental Plan 2013. There are no trees located within the site with exception of some palms and shrubs within the site frontage to Roseberry Street. Two street trees are located within Council land along the site frontage.



Figure 1: Site Map
Source: Six Maps 2018

1.2 Site Context

Abutting the site's eastern boundary is Manly West Park. Opposite the site to the west, on the north-western corner of the intersection of Hayes Street and Roseberry Street, is a Woolworths Supermarket and cafe. Located approximately 10m to the north west of the site is Burnt Bridge Creek which is a part covered and part open canal running from the north east of the site to the north west of the site. Approximately 100m to the south west is a Harvey Norman Store and approximately 250m to the south west is a Bunnings Warehouse.

The nearest local centre to the site is located approximately 250m north west of the site on Condamine Street (zoned B2 Local Centre under the Warringah Local Environmental Plan 2011). The Stockland Balgowlah Shopping Centre (zoned B2 Local Centre under Manly Local Environmental Plan 2013 (LEP 2013) is also located approximately 530m to the south of the site and comprises a Coles Supermarket and 59 specialty retail shops.

The site is located within a former industrial zoned precinct away from any nearby residential areas. The nearest residential properties are located approximately 180m to the north on Kenneth Road.



Figure 2: Aerial Locality Map
Source: SIX Maps, 2018



Photo 1: The site, Roseberry Street frontage (site marked in dashed outline)



Photo 2: The site, view west from Manly West Park (site behind trees)

1.3 Site Development History

Development Consent No. 300/2016

Development Consent No 300/2016 was issued by Council on 18 May 2017 for the following works:

"Demolition works, consolidation of three (3) lots into one (1), construction of two (2) shops including an ALDI Store and signage."

Construction works relating to Development Consent 300/2016 have commenced on the site.

Condition 59 (6WM02) of Notice of Determination No. 300/2016 restricts the delivery and waste collection hours as follows:

"59 (6WM02)

Deliveries and waste collection must only occur during the following hours:

Monday-Saturday: 6.00am-8.00pm

Sundays and Public Holidays 8.00am-8.00pm

Reason: To minimise disruption to neighbouring properties."

Modification of Development Consent No. 300/2016

On 16 May 2018 Northern Beaches Local Planning Panel (NBLPP) on behalf of Northern Beaches Council as the consent authority refused the Modification of Development Consent No. 300/2016 to extend the approved delivery hours. The Modification Application was recommended for approval by Council Officers subject to the following Conditions No. 59A and 59B:

"Condition No. 59A

Deliveries shall occur during the following hours:

Monday-Sunday including Public Holidays 24 hours"

Reason: To minimise disruption to neighbouring properties.

Condition No. 59B

Delivery vehicles over 6m in length must approach and depart the site using Condamine Street and enter and exit Roseberry Street to/from Kenneth Road or Hayes Street. Use of Balgowlah Road or Kenneth Road (east of Roseberry Street) to be avoided.

Reason: To minimise impacts upon residential premises in Balgowlah Road & Kenneth Street."

The NBLPP refused the Section 4.55(2) Application for the following two reasons:

"1. The acoustic report assessed the impacts of the proposal based on truck movements travelling from Balgowlah Road into Roseberry and exiting onto Condamine Street via Kenneth Road. The report did not address vehicles travelling in the alternate direction as set out in Councils assessment report. The Panel is therefore not satisfied that the acoustic impacts on the residential properties adjoining the roundabout at Kenneth Road and Roseberry Street have been adequately addressed, specifically the number of movements by 19 metre trucks occurring between 10pm and 6am.

2. Any application to extend delivery hours should be supported by a Plan of Management which includes a mechanism for any noise complaints from nearby residences"

Review of Modification Application to DA300/2016

On 27 July 2018, a review of modification application to DA300/2016 prepared by Milestone was lodged with Northern Beaches Council, reference No. REV2018/0013. This application was withdrawn by Milestone on 15 August 2018. On the basis it was lodged more than 28 days after the determination of the Section 4.55 Application on 16 May 2018.

1.4 Complaint History

Council's Assessment Report for DA-300/2016 referred to complaints made regarding deliveries in Roseberry Street as justification for restricting the delivery hours of the ALDI Store:

"It was noted within the Statement of Environmental Effects prepared by Milestone (AUST) Pty Limited that the proposed hours of operation of the ALDI store are 7am to 10pm, 7 days a week. Deliveries to the ALDI store and loading and unloading activities on-site are indicated to occur 24 hours a day, 7 days a week. Due to ongoing noise complaints related to deliveries in Roseberry Street it is not recommended that the proposed delivery hours are permitted. A standard condition relating to the permitted hours for waste collection and deliveries has been put on the health referral."

Milestone lodged with Council an application under the Government Information (Public Access) Act 2009 (GIPA) on 13 July 2017 to obtain copies of the complaints which are summarised in **Table 1**. The majority of the complaints appear to be from one complainant who lives to the south of the site near the intersection of Roseberry Street and Balgowlah Road. The location of the alleged offending properties are shown in **Figure 3**, with the nearest offender being 127m south of the site. The subject site is 180m from the nearest residential property on Kenneth Road to the north and 280m from the nearest residential property to the south on Balgowlah Road.

Table 1: Complaint Summary

Date	Alleged Offender(s)	Complaint
19 December 2014	Richard's Meats	Refrigeration units running continuously
	Humphreys Office Supplies	Waste collection at 6.30am on Sunday
24/25/26 December 2014	Unspecified	Persistent humming from refrigeration units
8 February 2015	Arrivederci's Restaurant	Waste collection at 5am on Sunday
22 March 2015	Fantastic Furniture	Mowing at 6.15am on Sunday morning
	Arrivederci's Restaurant	Waste collection between 5.00am and 7.00am Sunday mornings and exhaust fans running on busy evenings
	Richard's Meats	Refrigeration units running continuously
	Sydney Water	Road works between 1am and 5am
23 March 2015	Fantastic Furniture	Mowing at 6.00am on Sunday
2 September 2015	Richard's Meats	Delivery at 4.50am
12 September 2015	Café Sixty Four Manly Freezers Richards Meats	Four deliveries from refrigerated trucks between 5.30am and 5.55am
24 December 2015	North west corner of Roseberry Street and Balgowlah Road	Grease trap waste collection
8 February 2016	Manly Freezers	Delivery at 4.30am
5 July 2016	South end of Roseberry Street possibly Manly Freezers	Banging metal at 5am Tuesday morning
21 January 2017	Harvey Norman	Loading or unloading of deliveries at 5am Saturday mornings for 30-45 minutes.
23 January 2017	Unspecified	Noise coming from Roseberry Street and Balgowlah Road from 4am onwards.
29 January 2017	Council Street Sweeper	Street sweeper operating at 6am Sunday morning.
22 June 2017	Manly Freezers	Commencing operation at 5am
	Harvey Norman	Waste collection between 2am and 4am

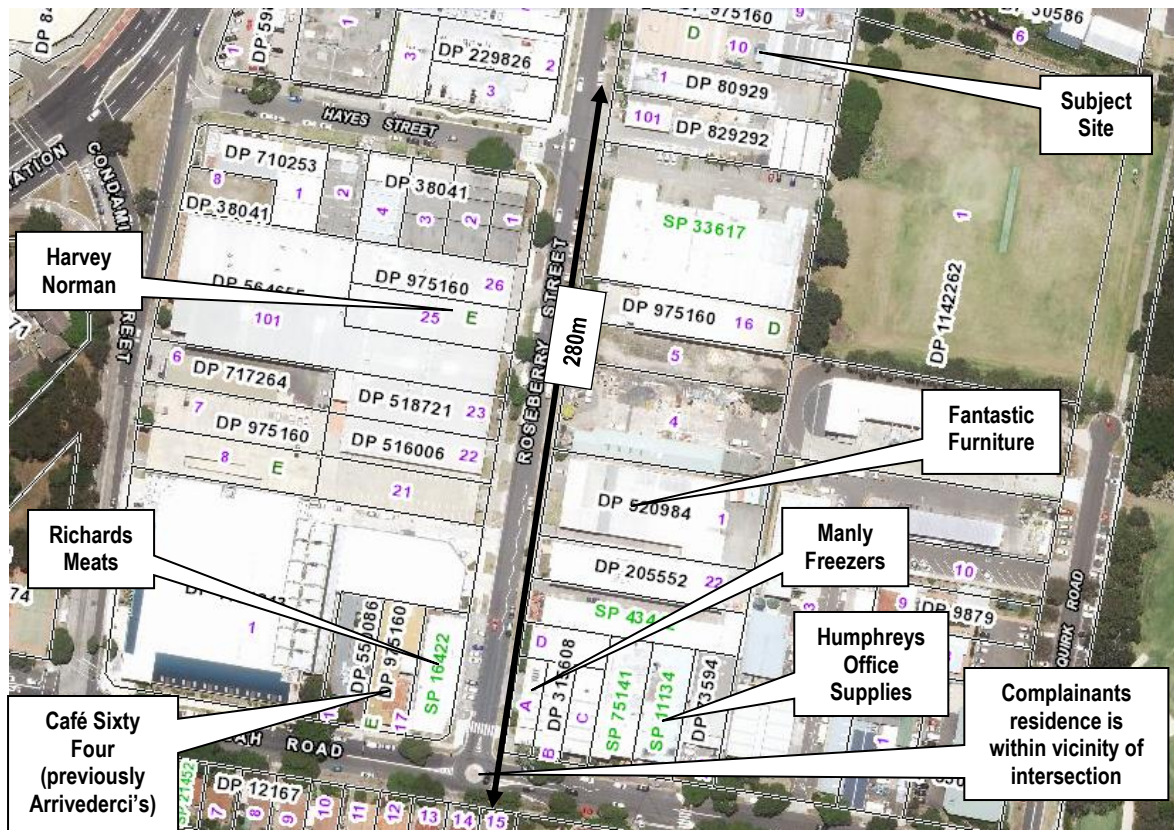


Figure 3: Complaints Map
Source: Six Maps 2017

2. PROPOSED MODIFICATION

ALDI Stores do not include kitchens, delicatessens or the like where fresh food is handled or prepared within the premises. All goods for this site (with exception for fresh bread) are packaged at ALDI Stores Main Warehouse and Distribution Centre in Minchinbury before they are delivered to the site in ALDI controlled and operated vehicles. It is essential for the viability of the ALDI Store operations to have the largest possible window for deliveries. Flexibility to undertake deliveries 24 hours, 7 days per week is essential to ensure that fresh fruit and vegetables are available for morning trade. 24 hour, 7 days deliveries allow for traffic congestion and accidents that may occur on the delivery route.

Delivery Hours

This proposal seeks to amend Condition 59 (6WM02) of Notice of Determination No. 300/2016 which limits the hours of deliveries and waste collection. It is proposed for deliveries to be undertaken 24 hours, 7 days per week. Condition 59 (6WM02) of Notice of Determination No. 300/2016 is proposed to be modified as follows:

"59 (6WM02)

~~Deliveries and~~ Waste collection must only occur during the following hours:

Monday-Saturday: 6.00am-8.00pm

Sundays and Public Holidays 8.00am-8.00pm

Reason: To minimise disruption to neighbouring properties."

It is proposed to add a new condition 59A and 59B to address delivery hours as recommended by Council Officers in previous Section 4.55(2) Application:

Condition No. 59A

Deliveries shall occur during the following hours:

Monday-Sunday including Public Holidays 24 hours"

Reason: To minimise disruption to neighbouring properties.

Condition No. 59B

Delivery vehicles over 6m in length must approach and depart the site using Condamine Street and enter and exit Roseberry Street to/from Kenneth Road or Hayes Street. Use of Balgowlah Road or Kenneth Road (east of Roseberry Street) to be avoided.

Reason: To minimise impacts upon residential premises in Balgowlah Road & Kenneth Street.

The delivery route referred in proposed Condition 59B is shown in **Figure 4**.



Figure 4: Delivery Route Map

Source: Noise Assessment Report prepared by Wilkinson Murray June 2018

ALDI Stores adopts a unique approach to the delivery of goods which minimises the impact of service vehicles on the surrounding community. All products, including general grocery, dairy, meat and fresh produce, are delivered by independent suppliers to the main warehouse and distribution centre in Minchinbury. At the warehouse and distribution centre, all products (with the exception of fresh bread) are packaged into pallets and loaded onto ALDI trucks. Deliveries are consolidated and reduced by eliminating the need for independent suppliers to make deliveries to the site.

Individual ALDI vehicles are equipped with a cool room component to enable general grocery, fresh food and frozen items to be delivered in one trip. This not only reduces the number of service vehicle deliveries required to support the ALDI Store, but eliminates the need for independent suppliers to make deliveries to the site. Undertaking deliveries in vehicles owned and managed by ALDI means that deliveries can be stringently managed.

ALDI Stores will utilise 15.6m vehicles for deliveries to the site. Generally it is anticipated that up to 2-4 deliveries will be made to the ALDI Store each day comprising up to three ALDI-owned 15.6m truck deliveries and two (2) deliveries from independent bread providers, using either a small truck or van typically having a maximum length of 12.5 metres.

All ALDI delivery vehicle movements will be accommodated on the site in accordance with AS 2890.1:2004 and 2890.2-2002 and on-site manoeuvring areas provide for service vehicles to enter and exit the site in a forward direction (refer to Vehicle Swept Path drawings within the Traffic Report for further details). All service vehicles will be managed along classified roads and streets currently supporting truck movements.

The potential noise impacts from the extended delivery hours of the ALDI Store are considered to be negligible, pose minimal environmental impacts and will preserve the amenity of surrounding properties. An Acoustic Report has been prepared by Wilkinson Murray and is held at **Appendix A**. Wilkinson Murray reviewed the complaints received from Council as referred to in **Table 1** during the preparation of the acoustic report. The Acoustic Report also provides additional noise assessment to address the reason for refused of the previous Modification Application.

3. ASSESSMENT UNDER S4.55 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

3.1 Substantially the Same Development

The proposed modification requires assessment under Section 4.55(2), which states that Council can modify the consent where:

- (a) *"it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent".*

The proposed modification does not alter the approved use of the tenancy. The proposal seeks only to amend Condition 59 of Development Consent No. 300/2016 to extend the delivery hours of the ALDI Store to allow deliveries to be made 24 hours, 7 days per week as originally proposed. It is considered the proposed modification results in substantially the same development as originally approved.

3.2 Public Notification

Section 4.55(2) of the Environmental Planning and Assessment Act 1979, as amended (Act) states that the consent authority may modify a development consent if:

- (c) *"it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be".*

Council will publicly notify details of the proposal to nearby properties in accordance with the Manly Development Control Plan 2013 Amendment 11 (DCP 2013). Should submissions be received, the proponent will address in writing all relevant matters raised by concerned persons.

The Modification is therefore consistent with the requirements of Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the Act) (as amended).

4. STATUTORY PLANNING FRAMEWORK AND ENVIRONMENTAL ASSESSMENT

In accordance with Section 4.15(1) of the Act the following section provides an appraisal of the proposed modification, having regard to the statutory planning instruments that apply to this site.

4.1 Manly Local Environmental Plan 2013

Zoning and Permissibility

The site is located within the B6 Enterprise Corridor zone under LEP 2013 (refer to **Figure 5**). The objectives of the B6 Zone are:

- *"To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity."*

The proposal complies with the objectives of the zone by continuing to offer a compatible business on a main road and promoting that business by allowing flexibility of delivery times. The ALDI use and associated deliveries is permissible with Council's Development Consent.

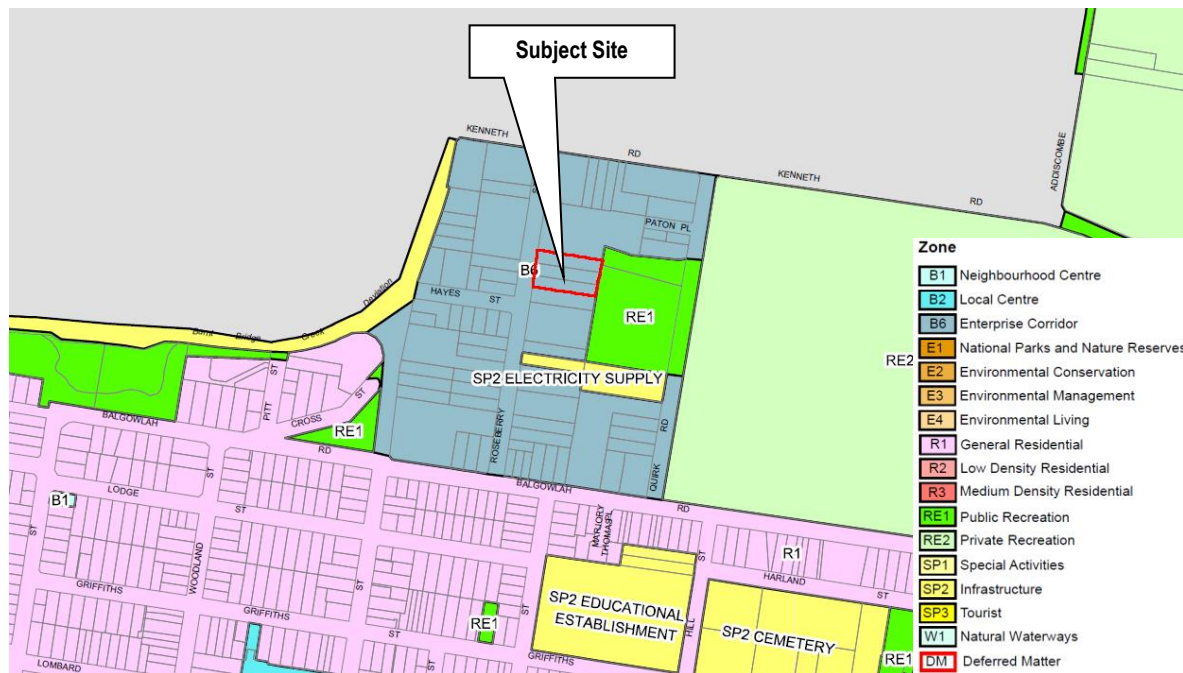


Figure 5: Land Zoning Map
Source: LEP 2013

Heritage

The site is not a heritage item or an interim heritage, nor is it located within a Heritage Conservation Area under the LEP 2013.

4.2 Manly Development Control Plan 2013 Amendment 11

3.4.2.3 Acoustical Privacy (Noise Nuisance)

a) *Consideration must be given to the protection of acoustical privacy in the design and management of development.*

The approved loading dock considers the acoustic privacy of neighbouring properties and is located to the rear of the ALDI Store enclosed by boundary walls and the ALDI building. ALDI have standard procedures for delivery drivers to minimise the impacts on surrounding development. The management procedures include the following:

- No reversing alarms will be used on site (only rear view cameras will be used);
- Ongoing training for drivers and store personnel to minimise noise generated; and
- Drivers will be advised to avoid compression braking in the vicinity of nearby residences.
- Truck rotation on-site via a near silent truck turntable device.

b) *Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*

The design of the approved loading dock considers the acoustic privacy of neighbouring properties and is located to the rear of the ALDI Store backing onto a public park and golf course beyond to the east.

c) *Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures. See particular requirements for noise control reports for licenced premises below at paragraph g) below.*

A revised noise report has been prepared by Wilkinson Murray dated June 2018 and is held at **Appendix A** to address the reason for refusal of the previous Section 4.55 Application. The report concludes that:

"A noise assessment was completed for the ALDI store at Balgowlah which has included the assessment of all potential noise including from; fixed mechanical plant, carpark and noise associated with the delivery of goods.

Background noise monitoring was used to establish the existing noise levels from which project specific noise criteria were derived. These criteria were developed using the EPA's Noise Guide for Local Government and Industrial Noise Policy.

Because of the findings of this assessment it has been determined that no noise mitigation is required to the development and that trucks can deliver goods to this store at any time during the day, evening, and night

In the case of noise from delivery trucks along the road network, it has been determined that the limited number of vehicles that will pass by residences Kenneth Road will not adversely impact on the acoustic amenity, even when considering night-time movements. The proposed use of the delivery route as per condition 59B of the Council Officer report will therefore result in acceptable acoustic impacts."

4.3 Section 4.15(1) Assessment

Section 4.55(3) of the Act requires the consent authority to take into consideration matters referred to in Section 4.15(1) where relevant to the proposed modification. An assessment of these relevant matters is contained below.

4.3.1 Impact of the development including the environmental impact of the development on both the natural and built environment and social and economic impacts on the locality.

Noise Impacts

The revised Noise Assessment Report held at **Appendix A** prepared by Wilkinson Murray (dated June 2018) provides an assessment of the potential adverse noise impacts on nearby residential receivers associated with the truck deliveries within the proposed extended delivery schedule. The nearest residential receivers are located 180m from the site. Wilkinson Murray undertook long term background noise monitoring from 22 Roseberry Road, 169 Balgowlah Road and 82 Kenneth Road.

The revised Noise Assessment Report prepared by Wilkinson Murray concludes the following:

"A noise assessment was completed for the ALDI store at Balgowlah which has included the assessment of all potential noise including from; fixed mechanical plant, carpark and noise associated with the delivery of goods.

Background noise monitoring was used to establish the existing noise levels from which project specific noise criteria were derived. These criteria were developed using the EPA's Noise Guide for Local Government and Industrial Noise Policy.

The noise assessment has determined that following the implementation of mitigation that:

- *Compliance with established site-specific noise criteria will be achieved at all residential receivers.*
- *Compliance with established site-specific noise criteria will be achieved at all commercial receivers.*

Because of the findings of this assessment it has been determined that no noise mitigation is required to the development and that trucks can deliver goods to this store at any time during the day, evening, and night.

With respect to the rooftop mechanical plant, noise mitigation is not required to meet the noise criteria derived from the relevant EPA guidelines or Condition 11 of the Conditions of Consent. In this regard, the residential receivers considered are located 180 m away.

In the case of noise from delivery trucks along the road network, it has been determined that the limited number of vehicles that will pass by residences Kenneth Road will not adversely impact on the acoustic amenity, even when considering night-time movements. The proposed use of the delivery route as per condition 59B of the Council Officer report will therefore result in acceptable acoustic impacts."

In addition to the findings and conclusions of the acoustic analysis, ALDI has a number of standard management procedures to ensure all operations have minimal environmental impacts on surrounding land uses. The management procedures include the following:

- No reversing alarms will be used on site (only rear view cameras will be used);
- Ongoing training for drivers and store personnel to minimise noise generated; and
- Drivers will be advised to avoid compression braking in the vicinity of nearby residences.

The POM held at **Appendix B** provides details regarding how deliveries to the store will be managed to minimise any adverse impacts on the surrounding properties. The POM also outlines the complaint handling procedure in the event any complaints are received by ALDI regarding delivery trucks.

Traffic Impacts

The proposed extended delivery hours for the ALDI Balgowlah Store will have a negligible impact on traffic generation and congestion in the locality. The revised delivery schedule will allow for greater flexibility of the existing delivery arrangements and allow for fresh produce to be provided on the ALDI shop floor prior to the store's opening every day. Therefore it is paramount that the "window" for operation of the loading dock is as generous as possible so as to allow for additional time for unloading of the delivery truck in the event of delays.

The proposal will provide greater flexibility of delivery times to allow for evening deliveries to the ALDI Store to be made outside peak morning and evening traffic periods, thus reducing the cumulative traffic impact of deliveries in the surrounding road network and on arterial roads.

4.3.2 Suitability of the site for the development

The proposed modification development aims to provide appropriate measures to maximise efficiencies and economic growth whilst maintaining amenity to surrounding development and is fitting for the B6 zoned land.

4.3.3 Any submissions made in accordance with the Act or Regulation

The proposal will be publicly notified in accordance with Council's notification provisions. Upon receipt of any submissions made during that exhibition period the proponent will prepare a response to those submissions.

4.3.4 The Public Interest

The proposal continues to facilitate the orderly development and operation of the site. The proposal supports the long-term viability of the ALDI Store. The public interest is well served by the ALDI Store offering fresh produce on a daily basis to satisfy consumer choice and convenience and providing greater accessibility to grocery shopping whilst maintaining minimal environmental impacts. The proposed delivery schedule will enable ALDI deliveries to occur outside peak hours and therefore will have positive outcomes for logistics and traffic on arterial roads.

5. CONCLUSION

This Section 4.55(2) Modification Application seeks consent for extended delivery hours to the approved ALDI Store located at the property known as 22-26 Roseberry Street, Balgowlah (Lot 10 DP 1233834). The proposal seeks to extend delivery hours of the approved ALDI Store to 24 hours, 7 days per week. The proposal will improve the flexibility of ALDI deliveries to the site without adversely impacting on the amenity of the subject land and surrounding area.

The delivery hours proposed pose minimal environmental impacts overall, and in particular, no adverse noise impact resulting from the proposal is confirmed by the revised Noise Assessment Report prepared by Wilkinson Murray held at **Appendix A**. The Plan of Management (**Appendix B**) provides confirmation that the use of the site will not result in any adverse impacts on the neighbourhood properties and sets out the procedure for handling noise complaints. The revised Noise Assessment Report and Plan of Management have been prepared to address the two reasons of refusal for the Section 4.55(2) Application determined by the NBLPP on 16 May 2018. The proposed extended delivery hours will ensure the operational efficiency and viability of the approved ALDI Store through the maximisation of the delivery schedule whilst maintaining the amenity of the surrounding area.

Based on the conclusions of the comprehensive assessment undertaken, the merits of the development and in the absence of any significant adverse environmental, social or economic impacts, Council's approval of the proposed modification development is sought.

Yours sincerely
Milestone (AUST) Pty Limited



Kira Liu
Town Planner



Patrick Lebon
Director

Encl: