
Bayside Planning Panel

10/10/2017

Item No	5.1
Application Type	Section 96 Application – Commercial Development
Application Number	2001/537/16
Lodgement Date	9 May 2017
Property	238-262 and 240 Bunnerong Road, Hillsdale NSW Lot 102 DP 1072389
Owner	PO Sang Brothers Investment (Australia) Pty Ltd
Applicant	Milestone (AUST) Pty Ltd
Proposal	Section 96(2) Application to modify Development Consent No. 2001/537 to amend Condition No. 28 to permit the following hours for the southern loading dock: 7.00am to 8.00pm Monday to Sunday, including Public Holidays; and to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store.
No. of Submissions	Thirteen (13) submissions
Cost of Development	\$0
Report by	Olivia Yana, Development Assessment Planner

Officer Recommendation

- A. That Development Application No. 2001/537/16 for Section 96(2) Application to modify Development Consent No. 2001/537 to amend Condition No. 28 to permit the following hours for the southern loading dock: 7.00am to 8.00pm Monday to Sunday, including Public Holidays; and to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store at 238-262 and 240 Bunnerong Road, Hillsdale be REFUSED pursuant to Section 80(1)(B) of the Environmental Planning and Assessment Act 1979 for the following reasons:
- 1 Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy the aims of Botany Bay Local Environmental Plan 2013, as the proposal fails to create a highly liveable urban place through the promotion of design excellence in all elements of the built environment and public domain and fails to protect residential amenity;
 - 2 Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy the objectives of Botany Bay Local Environmental Plan 2013 B2 Local Centre zone, as the proposed extension of loading dock operating hours will not positively contribute in serving the needs of people who live in the local area.
 - 3 Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to comply with the objectives and controls of Botany Bay Development Control Plan 2013, including:
 - a) Part 5.3.2.8 – Interface between Business Zones and Adjoining Landuses.

- b) Part 5.3.3.1 – Acoustic Privacy.
 - c) Part 5.3.3.3 – Solar Access and Shadow.
- 4 Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal is unsatisfactory, as information required to allow the proper assessment of the application is not provided by the applicant, including solar access and noise level of internal habitable room of the adjoining residential dwellings.
 - 5 Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposal will have an impact on the amenity of the locality in that the proposed extension of the loading dock operating hours is likely to generate adverse impacts for the adjoining residential properties in terms of noise generation from the proposed additional night time and early morning activity.
 - 6 Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the proposed extended hours of deliveries, given the sites proximity to residential dwellings.
 - 7 Pursuant to Section 96(2)(a) of the Environmental Planning and Assessment Act 1979, the proposal fails to satisfy the 'test' that the development to which the consent as modified is substantially the same development as the development for which the consent was originally granted.
 - 8 Having regard the previous reasons noted above and the number of submissions received by Council against the proposed development, pursuant to the provisions of Section 79C(1)(d) and Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the proposed Section 96(2) modification application is not in the public interest.

B. That the objectors be advised of the Bayside Planning Panel's decision.

Attachments

1. Planning Assessment Report
 2. Statement of Environmental Effects
 3. Addendum to Statement of Environmental Effects
 4. Noise Report
 5. Loading Dock Management Plan
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Location Plan

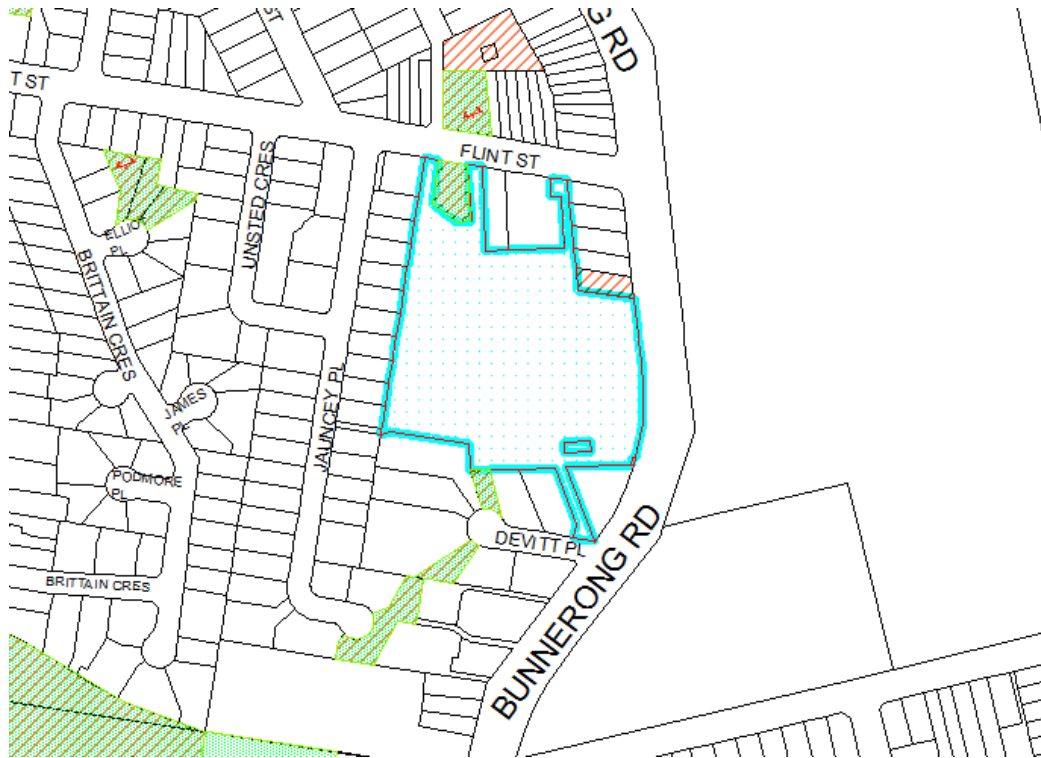


Figure 1: Locality Plan (subject site outlined in blue)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	2001/537/16
Date of Receipt:	9 May 2017
Property:	238-262 and 240 Bunnerong Road, Hillsdale NSW Lot 102 DP 1072389
Owners:	PO Sang Brothers Investment (Australia) Pty Ltd
Applicant:	Milestone (AUST) Pty Ltd
Proposal:	Section 96(2) Application to modify Development Consent No. 2001/537 to amend Condition No. 28 to permit the following hours for the southern loading dock: 7.00am to 8.00pm Monday to Sunday, including Public Holidays; and to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store.
Recommendation:	Refused
Value:	\$0
No. of submissions:	Thirteen (13) submissions
Author:	Olivia Yana, Development Assessment Planner
Date of Report:	28 September 2017

Key Issues

Bayside Council received Section 96(2) Application to modify Development Consent No. 2001/537 to amend Condition No. 28 to permit the following hours for the southern loading dock: 7.00am to 8.00pm Monday to Sunday, including Public Holidays; and to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store at 238-262 and 240 Bunnerong Road, Hillsdale.

The application was placed on public exhibition for a 14 day period from 2 June to 16 June 2017, thirteen (13) objections were received.

On 5 July 2017, Council informed the applicant of the issues raised in the submissions, which includes noise and amenity impact to the adjoining residential properties, anti-social behaviour, traffic impact, impact on leased residential properties, potential operation outside of the proposed extended hours, and precedent to extension of operating hours of the northern loading dock.

On 15 September 2017, Council requested additional information from the applicant to address actions to mitigate noise resulting from the development.

On 20 September 2017, applicant submitted a response to the additional information request.

Additional information received from the applicant was not subject to re-notification to the objectors, as the proposal could not be supported.

Given the extent of impact from the proposed development to the neighbouring residential properties and that noise mitigation actions would result in adverse impact to the amenity of the adjoining property, the proposed extension of southern loading dock of Aldi Store operating hours cannot be supported and the proposal is recommended for REFUSAL.

Recommendation

- A. That Development Application No. 2001/537/16 for Section 96(2) Application to modify Development Consent No. 2001/537 to amend Condition No. 28 to permit the following hours for the southern loading dock: 7.00am to 8.00pm Monday to Sunday, including Public Holidays; and to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store at 238-262 and 240 Bunnerong Road, Hillsdale be REFUSED pursuant to Section 80(1)(B) of the Environmental Planning and Assessment Act 1979 for the following reasons:
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 - 2 Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy the objectives of Botany Bay Local Environmental Plan 2013 B2 Local Centre zone, as the proposed extension of loading dock operating hours will not positively contribute in serving the needs of people who live in the local area.
 - 3 Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to comply with the objectives and controls of Botany Bay Development Control Plan 2013, including:
 - a) Part 5.3.2.8 – Interface between Business Zones and Adjoining Landuses;
 - b) Part 5.3.3.1 – Acoustic Privacy; and
 - c) Part 5.3.3.3 – Solar Access and Shadow.
 - 4 Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal is unsatisfactory, as information required to allow the proper assessment of the application is not provided by the applicant, including solar access and noise level of internal habitable room of the adjoining residential dwellings.
 - 5 Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposal will have an impact on the amenity of the locality in that the proposed extension of the loading dock operating hours is likely to generate adverse impacts for the adjoining residential properties in terms of noise generation from the proposed additional night time and early morning activity.

- 6 Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the proposed extended hours of deliveries, given the sites proximity to residential dwellings.
- 7 Pursuant to Section 96(2)(a) of the Environmental Planning and Assessment Act 1979, the proposal fails to satisfy the 'test' that the development to which the consent as modified is substantially the same development as the development for which the consent was originally granted.
- 8 Having regard the previous reasons noted above and the number of submissions received by Council against the proposed development, pursuant to the provisions of Section 79C(1)(d) and Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the proposed Section 96(2) modification application is not in the public interest.

B. That the objectors be advised of the Bayside Planning Panel's decision.

Background

Site History & Approved Development

Development Application No. 01/537 was approved by Council on 14 June 2002 for renovations to the existing shopping centre and construction of a new residential tower at 238-262 Bunnerong Road, Hillsdale. Council has determined several Section 96 Applications relating to the building, as listed below.

Section 96(1A) Application No. 01/537/02 was approved by Council on 21 November 2002 for various amendments including reorientation of the escalator, relocation of the travelator, amended layout to retail area and associated amenities and additional access ramps.

Section 96(1A) Application No. 01/537/03 was approved by Council on 22 May 2003 for various amendments including staging into two stages, diversion of Flint Street entry, altered landscaping and deletion of composting.

Section 96(1A) Application No. 01/537/04 was approved on 23 May 2003 to amend apartment layout/design, recreation deck, podium deck, ducting, roof appearance, increase gymnasium size and car parking rearrangement.

Section 96(1A) Application No. 01/537/05 was approved by Council on 23 January 2004 for internal revisions to retail layout and residential entry lobby.

Section 96(1A) Application No. 01/537/06 was approved by Council on 14 April 2004 to delete underground cabling requirement.

Section 96(1A) Application No. 01/537/07 was approved by Council on 14 April 2004 to increase the size of the deck carpark to the rear of the development from 54 spaces to 110 spaces and the provision of additional landscaped planter beds.

Section 96(1A) Application No. 01/537/08 was approved by Council on 27 October 2004 to amend conditions relating to waste management plans, management plans and landscaping.

Section 96(1A) Application No. 01/537/09 was approved by Council on 27 October 2004 for the revision of landscaping.

Section 96(1A) Application No. 01/537/10 was approved by Council on 27 October 2004 for various amendments to residential tower.

Section 96(1A) Application No. 01/537/11 was approved by Council on 26 October 2004 to amend conditions relating to matters to be completed.

Section 96(1A) Application No. 01/537/12 was approved by Council on 11 July 2005 for the removal of the shade cloth structure from the existing Woolworths roof.

Section 96(1A) Application No. 01/537/13 was approved by Council on 22 February 2007 to amend fencing of the shopping centre.

Section 96(1A) Application No. 01/537/14 was approved by Council on 26 June 2009 for the reduction of security hours previously subject to interim approval for 12 months.

Section 96(1A) Application No. 01/537/15 was approved by Council on 24 February 2011 to amend the concierge hours.

History of the application

On 5 July 2017, Council informed the applicant of the issues raised in the submissions, which includes noise and amenity impact to the adjoining residential properties, anti-social behaviour, traffic impact, impact on leased residential properties, potential operation outside of the proposed extended hours and precedent to extension of operating hours of the northern loading dock.

On 15 September 2017, Council requested additional information from the applicant to address actions to mitigate noise resulted from the development.

On 20 September 2017, applicant submitted response to the additional information request, which stated that the acoustic analysis outlined within the Noise Assessment prepared by Wilkinson Murray provides sufficient evidence and justification regarding the appropriateness of the proposed extended delivery hours. Further mitigation measures as suggested in the Noise Assessment report could be taken to mitigate the noise further. Should Council require the fence to be extended along the entire length of loading dock access and No. 10 Devitt Place, the impact of fence extension will be comparable with overshadowing resulted from a boundary fence. Shadow diagrams and justification under the Sunlight Planning Principle were not provided by the applicant.

Proposal

Section 96(2) Application to modify Development Consent No. 2001/537 to amend:

1. Condition No. 28, to permit the following hours for the southern loading dock:
 - 7.00am to 8.00pm Monday to Sunday, including Public Holidays; and
2. Condition No. 27, to refer to an amended loading dock plan of management for the Aldi Store Hillsdale.

Site Description

The subject site, being the Southpoint Shopping Centre, is located on the eastern side of Bunnerong Road between Flint Street to the north, Devitt Place to the south and Jauncey Place to the west. The application relates to the southern loading dock area, which services the Aldi Store and is accessible from Devitt Place. Aldi Store is occupying shop M02, which is currently vacant and was previously occupied by Coles Supermarket. Fitout of the shop is carried out under a separate complying development application. The subject tenancy is situated on level one at the south-eastern corner of the site within the shopping centre development. The Southpoint Shopping Centre is located directly below an 11 storey residential apartment building. An at grade car parking area is located west of the loading area. Development surrounding the loading dock is a medium density residential including high rise flat buildings and walk up flats.

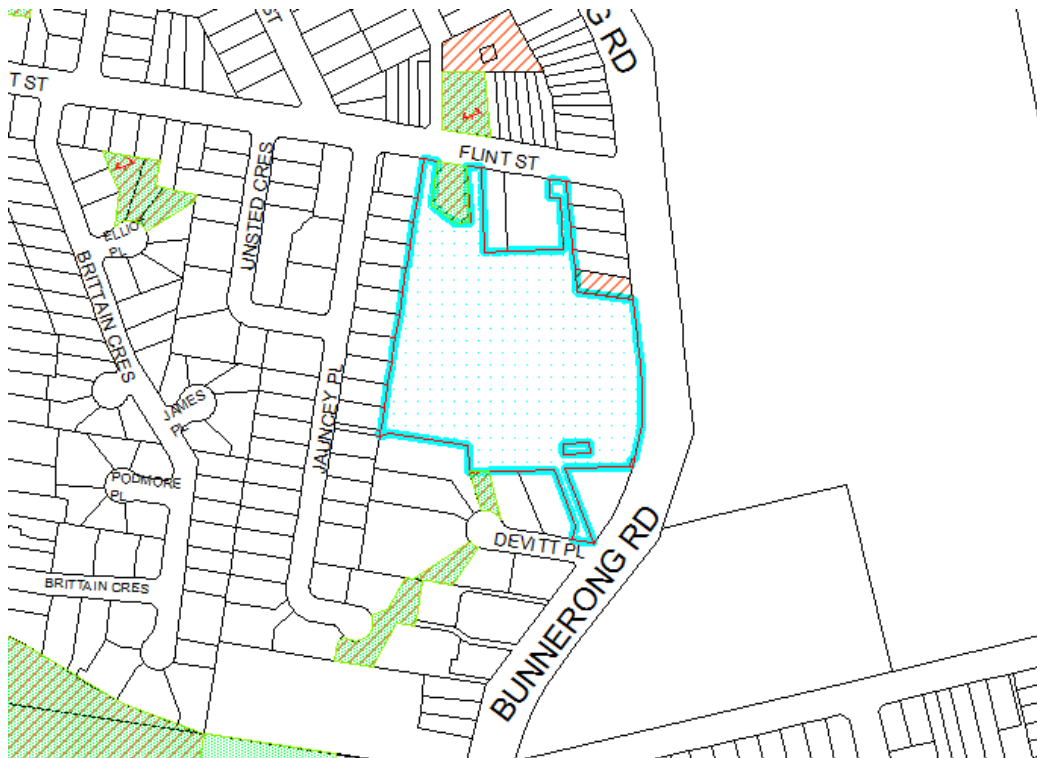


Figure 1: Locality Plan (subject site outlined in blue)



Figure 2: Aerial map

Assessment of Modification

The application seeks Council consent to modify Development Consent No. 2001/537 to permit the hours for the southern loading dock to operate between 7.00am to 8.00pm Monday to Sunday, including Public Holidays for Aldi Store Hillsdale.

1. Extension of loading dock operating hours

The approved operating hours of the northern and southern loading dock are as follows.

- a) Monday to Friday 7.00am to 6.00pm
- b) Saturday 7.00am to 6.00pm
- c) Sunday and Public Holidays 10.00am to 5.00pm

The proposal is seeking to extend operating hours for the southern loading during the evenings of Monday to Saturday by 2 hours, during the mornings of Sunday and Public Holidays by 3 hours, and during the evenings of Sunday and Public Holidays by 3 hours.

The approved consent of Development Consent No. 2001/537 stipulated the following conditions under modification No. 2001/537/15.

- 10 The operation of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, or otherwise.

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- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (L_{Aeq}) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background L_{A90} level (in the absence of the noise under consideration).
- (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds L_{Aeq} 50dB(A) day time and L_{Aeq} 40 dB(A) night time.
- (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds L_{Aeq} 65dB(A) day time/night time.
- (d) For assessment purposes, the above L_{Aeq} sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- (e) Certification from an accredited Acoustic Consultant as to compliance with the acoustic goals specified in parts (a)-(c) above shall be submitted prior the issue of the retail (Stage 1) and residential (Stage 2) occupation certificates.

Condition amended by Section 96(1A) Application received by Council on 22 September 2004 (01/537/10).

A Noise Assessment Report prepared by Wilkinson Murray dated March 2017, which was submitted with the application indicated that:

- a) Based on the predicted noise level in Table 5-2 under the L_{Aeq} , 15min dBA that assumes the delivery truck refrigeration is turned off and only with 1 entry or exit in 15 minutes period, the noise levels from delivery at the residences on 10 Devitt Place would exceed the intrusiveness criterion by up to 15dBA for each delivery events;
- b) The amenity criterion for evening is 50-55dBA. The predicted L_{Aeq} over the entire evening period at Location 1 is L_{Aeq} , 4 hr 55 for a single delivery, including truck arrival and departure, and unloading; and
- c) Some actions could be taken to mitigate noise further. For example:
 - Ensure that refrigeration is turned off before entry into the access to the loading dock;
 - Use of reversing camera rather than reverse beeper;
 - Install treatments to loading dock, including acoustic absorption (e.g. fibreglass) on the ceiling of the loading dock, and reduce any potential gaps between the truck and the loading dock wall;
 - Extend the existing fence along the entire length of the loading dock access path.

The Loading Dock Management Plan prepared by Milestone dated March 2017 nevertheless did not provide details of the delivery frequencies within the proposed extended operating.

The applicant also submitted a response to the additional information request from Council, which stated that the acoustic analysis outlined within the Noise Assessment prepared by Wilkinson Murray provides sufficient evidence and justification regarding the appropriateness of the proposed extended delivery hours. Further mitigation measures as suggested in the Noise Assessment report could be taken to mitigate the noise further. Should Council require the fence to be extended along the entire length of loading dock access and No. 10 Devitt Place, the impact of fence extension will be comparable with overshadowing resulted from a boundary fence. Shadow diagrams and justification under the Sunlight Planning Principle were not provided by the applicant.

Based on this information, the proposal will not comply with the following:

1. The conditions of consent of DA-2001/537 (Nos. 10 and 26), as stated above.

The operation of the premises will affect the amenity of the neighbourhood by reason of noise and that the noise intrusion will exceed 5dBA for the evening criterion of LAeq 40dB(A);

2. Infrequent delivery events.

The Loading Dock Management Plan and the Noise Assessment Report provide inconsistent details of the delivery frequencies within the proposed extended operating. The proposed hours will promote delivery of more than one event of a 15 minutes duration and the noise exceedance will potentially exceed beyond the level stated in the Noise Assessment Report submitted by the applicant; and

3. Executing the actions recommended by the Noise Assessment Report to mitigate noise.

The actions recommended in the Noise Assessment Report to mitigate noise further, which include using reverse camera rather than reverse beeper for delivery truck, and extending the fence along the entire loading dock access path, will not result in favourable outcomes. To use a reverse camera rather than a reverse beeper for delivery vehicles with maximum size of 17.6 metres is not considered to be a safe method of delivery and is inconsistent with the provisions under Work Health and Safety Regulation 2017. Further to that, the measure recommended to extend the fence along the entire loading dock access path will require consent from No. 10 Devitt Place to be constructed. Few residents of the property have objected to the proposal and consent from No. 10 Devitt Place may not be obtained for the construction of boundary fence between the adjoining properties. The fence extension will also result in detrimental impact the amenity, including solar access, of residential property at No. 10 Devitt Place. Shadow diagrams and justification under the Sunlight Planning Principle were not provided by the applicant to allow proper assessment of the impact

The proposed modification therefore is not supported.

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

Section 96(2) Modification Considerations:

Section 96(2) of the *Environmental Planning & Assessment Act 1979* states that “a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent if:”

- 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***

Section 96(2) Application to modify Development Consent No. 2001/537 is not considered to be substantially the same development as that to which was sought under the original development application. The proposed modifications to extend the approved southern loading dock operating hours will be inconsistent with Condition Nos. 10 and 26 as the operation of the premises will affect the amenity of the neighbourhood by reason of noise and that the noise intrusion will exceed 5dBA for the evening criterion of LAeq 40dB(A).

- b) ***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***

In accordance with Part 2 – Advertising & Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the development application was notified and advertised for 14 days from 2 June to 16 June 2017.

- c) ***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.***

Thirteen (13) submissions were received and considered as discussed below.

Section 96(3) Modification Considerations:

Section 96(3) of the *Environmental Planning and Assessment Act 1979* states that “In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.”

An assessment of the application has been carried out under the provisions of Section 79(C) of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered.

a) Section 79(C)(1)(a) the provisions of any Environmental Planning Instrument and Development Control Plan and any other matters prescribed by the Regulations.

The following Environmental Planning Instruments are relevant to this application:

Botany Bay Local Environmental Plan 2013

The relevant aims of the Plan are:

(f) to create a highly liveable urban place through the promotion of design excellence in all elements of the built environment and public domain; and

(g) to protect residential amenity.

In this regard, the proposal fails to satisfy the aims of the Plan in that it does not promote design excellence as the submitted acoustic report recommends construction of acoustic treatments that are unsightly and adversely affect the residential amenity of the locality. The proposal itself will have an adverse impact on the residential amenity of the locality in terms of unreasonable noise generation during night time and early hours.

The subject property is zoned B2 Local Centre in accordance with the provisions of BBLEP 2013. The proposed modification to extend the operating hours of southern loading dock of Aldi Store Hillsdale does not meet the objective of B2 Local Centre zone, as the proposed extension of loading dock operating hours will not positively contribute in serving the needs of people who live in the local area.

Botany Bay Development Control Plan 2013

Part 5 – Business Centres

The objectives and controls of Part 5 Business Centres of Botany Bay Development Control Plan 2013 are assessed as the following:

Part 5.3.2.8 – Interface between Business Zones and Adjoining Landuses

The proposed development does not satisfy the objectives of Part 5.3.2.8 in that it fails to address the impact of business zones at their interface with adjoining landuses; and to conserve the privacy, solar, access and overall amenity of neighbouring properties. The operation of the premises will affect the amenity of the neighbourhood by reason of noise and that the noise intrusion will exceed 5dBA for the evening criterion of LAeq 40dB(A). The measures recommended in the Noise Assessment Report to mitigate noise further by extending the fence along the entire loading dock access path will detrimentally impact the amenity, including solar access, of residential properties at No. 10 Devitt Place. Shadow diagrams and justification under the Sunlight Planning Principle were not provided by the applicant to allow proper assessment of the impact. The proposal will not satisfy the following controls of Part 5.3.2.8.

C2 Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.

C4 Noise emissions are to comply with the following noise criteria:

(i) The operation of all plant and equipment will not give rise to an equivalent continuous (L_{Aeq} sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA₉₀ level (in the absence of the noise under consideration).

(ii) The operation of all plant and equipment when assessed on any residential property will not give rise to a sound pressure level that exceeds L_{Aeq} 50dB(A) day time and L_{Aeq} 40 dB(A) night time.

(iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises will not give rise to a sound pressure level that exceeds L_{Aeq} 65dB(A) day time/night time.

C5 For assessment purposes, the above L_{Aeq} sound levels will be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

C7 Development will be designed to locate sources of noise such as garbage collection, loading/unloading areas, air conditioning plant/other machinery, and parking areas away from adjoining residential properties and where necessary, be screened by walls or other acoustical treatment.

Part 5.3.3.1 – Acoustic Privacy

The proposed development does not satisfy the objective and control of Part 5.3.3.1 in that it fails to ensure that new development provides adequate acoustic privacy levels internally and externally for neighbouring dwellings and residents and that habitable rooms of dwellings adjacent to high levels of external noise are to be designed to limit internal noise levels to a maximum of 45dB(A) in accordance with relevant Australian Standards for acoustic control. Information regarding internal noise level received within the habitable rooms of the neighbouring residential development was not provided by the applicant to allow proper assessment of the impact.

Part 5.3.3.3 – Solar Access and Shadow

The proposed development does not satisfy the objectives and controls of Part 5.3.2.8 in that it fails to provide information required to address solar access and shadow impact to the adjoining residential development. The action recommended in the Noise Assessment Report to mitigate noise from the proposed extension of the southern loading area operating hours is to extend the fence along the entire loading dock access path. Shadow diagrams and justification under the Sunlight Planning Principle were not provided by the applicant to allow proper assessment of the impact. The following controls of Part 5.3.3.3 must be satisfied:

C1 Development must demonstrate:

(i) Neighboring developments will obtain at least two hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and

(ii) 30% of any communal open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.

C2 The Development Application must provide solar diagrams that, as a minimum, illustrate compliance with the above control and comprise of plans and elevations demonstrating the shadows of the proposal at 9am, 12 noon, and 3pm on 21 March, 21 June and 21 December.

Based on the information provided above, the proposal is inconsistent with the provisions of BBDCP 2013 and therefore it is not supported.

b) Section 79(C)(1)(b) the likely impacts of the development including environmental impacts on both the natural and built environments, social and economic impacts in the locality.

As outlined in the assessment above, the proposed development will have significant adverse environmental, social or economic impacts in the locality. The proposal is therefore not supported.

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

The proposed modification to extend the approved operating hours of the southern loading dock at the site is not a suitable development due to the extent of non-complying elements as discussed above in the assessment section of this report. The proposal is therefore not supported.

d) Section 79(C)(1)(d) any submission made in accordance with the Act or Regulations.

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising the development application was notified to surrounding property owners for a 14 day period from 2 June to 16 June 2017, thirteen (13) objections were received.

The issues raised in the submissions are summarised as follows to avoid repetition:

- ***Noise and amenity impact to the adjoining residential properties***
Comment: Agreed. Refer to the discussions above.
- ***Anti-social behaviour***
Comment: The use of the loading dock is existing. The concern is not considered valid to the proposed modification which only seeks to extend the hours beyond that already approved.
- ***Traffic impact***
Comment: The use of the loading dock is existing. The concern is not considered valid to the proposed modification as the proposed additional delivery hours is unlikely to cause an impact on the existing local road network.
- ***Impact on leased residential properties***
Comment: Amenity of the adjoining properties will be adversely impacted as discussed above.
- ***Potential operation outside of the proposed extended hours***
Comment: Operation outside proposed hours should be reported to Council's Compliance section for investigation and action.
- ***Precedent to extension of operating hours of the northern loading dock***
Comment: Any application for a similar extension to the northern loading dock will be subject to the same merit assessment process.

e) Section 79(C)(1)(e) the public interest.

It is considered that granting approval to the proposed development will have a significant adverse impact on the public interest.

Conclusion

The proposed modification seeks to extend the delivery dock hours for the southern loading dock which is located in close proximity to residential dwellings. Given the extent of impact from the proposed development to the neighbouring residential properties and that noise mitigation measures proposed will also result in adverse impact on the amenity of the adjoining residential properties, the proposed extension of southern loading dock of Aldi Store operating hours cannot be supported and the proposal is recommended for REFUSAL.

18 April 2017

Ms Meredith Wallace
General Manager
Bayside Council
PO Box 21,
Rockdale NSW 2216

Attention: Mr Luis Melim, Manager of Development Services

Dear Ms Wallace,

SECTION 96(2) MODIFICATION APPLICATION TO AMEND DA NO. 01/537 TO EXTEND THE DELIVERY HOURS AND AMEND THE LOADING DOCK MANAGEMENT PLAN FOR THE ALDI STORE 238-262 & 240 BUNNERONG ROAD, HILLSDALE (LOT 102 DP 1072389)

We refer to the above site and submit a Section 96(2) Modification Application to Bayside Council (Council) for extended delivery hours and to provide an amended loading dock management plan for a new ALDI Store located within the Southpoint Shopping Centre at the property known as 238-262 Bunnerong Road and 240 Bunnerong Road, Hillsdale (Lot 102 DP 1072389). The approved delivery hours for the site are as follows:

- 7am to 6pm Monday to Friday;
- 7am to 6pm Saturday; and
- 10am to 5pm Sunday and public holidays.

This Section 96 (2) Modification Application seeks to amend Condition 28 of Development Consent No. 01/537 to revise the delivery hours of the southern loading dock used by the ALDI Store to be as follows:

- 7am to 8pm Monday to Sunday including public holidays.

Condition 27 of Development Consent No. 01/537 is also proposed to be modified to refer to the amended loading dock management plan for the ALDI Store. This Modification Application has been prepared for the lessee 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 Modification Application Form (1 copy).
- Land Owner Consent to lodge the DA (1 copy).
- Cheque payable to Council for \$968 (in accordance with fee estimate provided by 7 March 2017).
- This Statement of Environmental Effects Letter (4 copies) comprising:
 - Noise Assessment Report prepared by Wilkinson Murray Pty Limited dated March 2017 (**Appendix A**).
 - Notice of Modification of Development Consent Application No. 01/537 (**Appendix B**).
 - Loading Dock Management Plan prepared by Milestone dated March 2017 (**Appendix C**).
- 1 x CD-ROM containing the above supporting documentation.

The closest residential dwelling and sensitive receiver to the ALDI loading dock is located approximately 10m to the south west, at No. 10 Devitt Place, Hillsdale as defined by Wilkinson Murray Acoustic Consultants (Wilkinson Murray). Wilkinson Murray undertook noise monitoring at the nearest affected residence and the results from the noise monitoring are detailed in the Noise Assessment Report held at **Appendix A**.

The closest pedestrian access to the ALDI Store is located on the eastern elevation of the Southpoint Shopping Centre from Bunnerong Road (refer **Photo 2**).

The site is not identified as a Heritage Item nor is it located in a Heritage Conservation Area under Botany Bay Local Environmental Plan 2013.



Figure 2: Aerial Locality Map
Source: SIX Maps, 2017



Photo1: Entry to ALDI loading dock from Devitt Place.



Photo 2: Main pedestrian entry to the site from Bunnerong Road

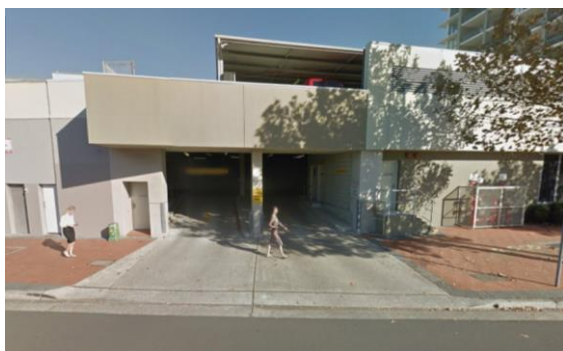


Photo 3: Vehicle entry to the site from Bunnerong Road.



Photo 4: Main customer vehicle entry to the site from Flint Street.



Photo 5: Loading Dock Access Driveway from Devitt Place



Photo 6: Existing ALDI Loading Dock (southern loading dock)

1.3 Site Development History

Development Consent No. 01/537

On 7 June 2002 Council approved Development Consent DA No. 01/537 for “*Development of existing Southpoint shopping centre and construction of residential buildings above*”. The relevant conditions of DA No. 01/537 are outlined below.

Condition 27 of Notice of Determination No. 01/537 requires the following:

“The applicant shall ensure that all users of the premises comply with the “Loading Dock Procedures” document received by Council on 23rd August 2001, except where amended by conditions of consent.”

Condition 28 of Notice of Determination No. 01/537 restricts the delivery hours to be as follows:

“Hours of operation for both loading docks, i.e. the northern and southern loading docks for the development shall be as follows:

<i>Monday to Friday</i>	<i>7.00am to 6.00pm</i>
<i>Saturday</i>	<i>7.00am to 6.00pm</i>
<i>Sunday and Public Holidays</i>	<i>8.00am to 8.00pm”</i>

Condition 29 of Notice of Determination No. 01/537 restricts the trading hours to be as follows:

“Trading Hours for the Shopping Centre shall be as follows:

<i>Monday to Friday</i>	<i>7.30am to 10.00pm</i>
<i>Saturday</i>	<i>8.00am to 9.00pm</i>
<i>Sunday and Public Holidays</i>	<i>8.00am to 8.00pm”</i>

This Section 96(2) Modification Application does not propose any change to the existing approved trading hours of the shopping centre.

Modification of Development Consent No. 01/537

Fourteen Section 96 applications have been lodged and determined for Development Consent No.01/537.

A copy of the Notice of Consent for the most recent Modification No. 01/537/15 is held at **Appendix B**.

Various other development applications have been lodged for the site. A review of the descriptions on Council's DA Tracking has revealed no applications that relate to delivery hours or the loading dock management plan.

2. PROPOSED DEVELOPMENT

Fitout

The internal fitout of the subject tenancy to facilitate the ALDI Store supermarket does not form part of this proposal. The internal fitout of the tenancy is complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) and will be undertaken via a Complying Development Certificate (CDC). A copy will be provided to Council when complete under the requirements of the Codes SEPP.

Delivery Hours

This proposal seeks to amend Condition 28 of Notice of Determination No. 01/537 which limits the hours of the loading dock . Condition 28 of DA No. 01/537 is proposed to be modified as follows:

"Hours of operation for ~~both the northern~~ loading docks, i.e. ~~the northern and southern loading docks~~ for the development shall be as follows:

Monday to Friday	7.00am to 6.00pm
Saturday	7.00am to 6.00pm
Sunday and Public Holidays	10.00am to 5.00pm

Hours of operation for the southern loading dock of the development shall be as follows:

Monday to Sunday including public holidays 7am to 8pm."

The ALDI Store will be the only tenant using the southern loading dock shown in **Photo 6** for deliveries.

The proposed delivery hours will allow greater flexibility for the operation of the ALDI Store and allow fresh produce, especially bread to be provided to the store in a timely manner each day.

The potential noise impacts from the extended delivery hours of the ALDI Store are considered to be negligible, pose minimal environmental impacts and preserve the amenity of surrounding properties. An Acoustic Report has been prepared by Wilkinson Murray and is held at **Appendix A**.

Loading Dock Management Plan

This proposal also seeks to amend Condition 27 of DA No. 01/537 by lodging an amended Loading Dock Management Plan.

Condition 27 is proposed to be modified as follows:

*"The applicant shall ensure that all users of the northern loading dock comply with the "Loading Dock Procedures" document received by Council on 23rd August 2001, except where amended by conditions of consent. **The applicant shall ensure that the user of the southern loading dock complies with the "Loading Dock Management Plan" prepared by Milestone (AUST) Pty Limited dated March 2017**"*

The amended Loading Dock Management Plan is held at **Appendix A**.

3. ASSESSMENT UNDER S96 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

3.1 Substantially the Same Development

The proposed modification requires assessment under Section 96(2), which states that Council can modify the consent where:

- it is satisfied the proposed modification is of minimal environmental impact;
- it is satisfied that the development to which the modified consent relates is 'substantially' the same development;
- it has given public notice of the application if required by the Regulations; and
- it has considered any submissions received.

The proposed modification does not alter the approved use of the tenancy. The proposal seeks only to amend Conditions 27 and 28 of Development Consent No. 01/537 to extend the delivery hours of the ALDI Store relevant to the southern loading dock. The delivery hours are proposed to be extended by two hours in the evenings on Mondays to Saturdays, three hours in the mornings and three hours in the evenings on Sundays and public holidays. It is considered the proposed modification results in substantially the same development as originally approved.

The modification will be publically notified in accordance with Council's notification policies and the proponent will respond to any submissions received by Council if required. The development is therefore consistent with the requirements of Section 96(2) of the Environmental Planning and Assessment Act 1979 (the Act) (as amended).

4. STATUTORY PLANNING FRAMEWORK AND ENVIRONMENTAL ASSESSMENT

In accordance with Section 79C(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 Botany Bay Local Environmental Plan 2013

Zoning and Permissibility

The site is zoned B2 Local Centre under the Botany Bay Local Environmental Plan (LEP 2013) (refer to **Figure 3**). The objectives of the B2 Local Centre Zone are as follows:

- *"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."*

The extended delivery hours will provide greater flexibility for the ALDI Store to ensure that shelves are kept sufficiently stocked which is necessary for the ongoing operation of the store. The proposed extended delivery hours are suitable for land within the B2 Local Centre Zone.

The approved use of the ALDI Store tenancy as a "shop" in the "commercial premises" classification defined by the LEP 2013 will be continued and supported by the proposed delivery hours. The proposal is permissible with development consent from Council.

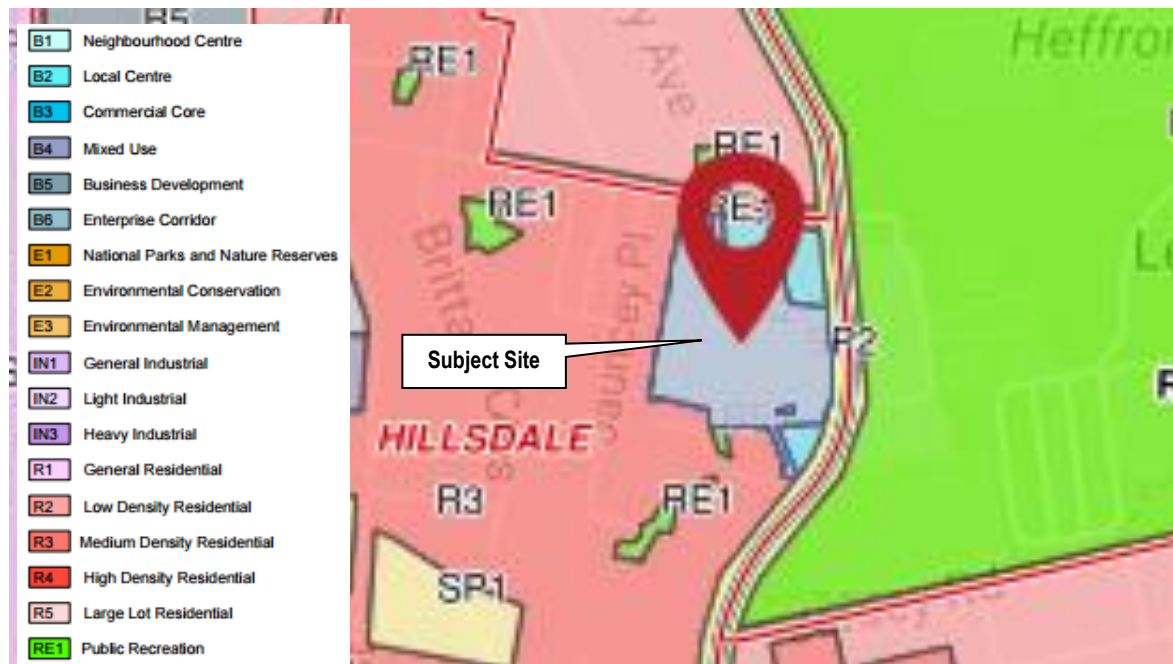


Figure 3: Zoning Map
Source: LEP 2013

Heritage

The site is not identified as a Heritage Item nor is it located in a Heritage Conservation Area or in close proximity to Heritage Items under LEP 2013.

4.2 Botany Bay Development Control Plan 2013

The proposed development continues the existing approved use of the tenancy for a shop. The proposed development is for the extension of delivery hours for the new ALDI Store and does not include any physical alterations and only the relevant sections of the Botany Bay Development Control Plan 2013 (DCP 2013) have been addressed below. The use has an existing approval and the fitout of the tenancy will be approved under a CDC.

3A - Car Parking

The route taken by ALDI delivery trucks will be via Bunnerong Road and Devitt Place. No change is proposed from the existing delivery vehicle route and a Traffic Report is not required in this instance. The ALDI Store will receive up to three deliveries from a 17.6 metre truck and one delivery from a rigid bread truck per day. The existing loading bay is partially covered and no physical works are proposed to the loading bay. The existing loading bay is shown in **Photo 6** above.

3C - Access and Mobility

The proposal will not result in any change to disabled access into or within the site.

5.2.2.9 – Hillsdale Local Centre

Part 5 includes controls specific to the Hillsdale Centre. The proposed extension of delivery hours will not impact on the scale or service level of the medium sized Hillsdale Centre. Loading for the ALDI Store will continue to take place from the rear of the site accessed from Devitt Place in accordance with the desired future character of Hillsdale Centre.

5.3.2.8 – Interface Between Business Zones and Adjoining Landuses

Part 5 contains controls to address the interface between business zones and adjoining land uses. The proposed delivery hours from 7am to 8pm seven days are considered to be appropriate in the context of surrounding residential development. A Noise Assessment Report that confirms the suitability of the proposal has been prepared by Wilkinson Murray and is held at **Appendix A**.

The Noise Assessment Report notes that whilst there would be exceedances of noise intrusiveness criterion for the apartment block located at 10 Devitt Place, Hillsdale, those exceedances would be brief, and the amenity criterion would still be satisfied.

5.3.2.12 - Servicing

No vehicles are proposed to stand on the road, footway or public domain while loading or unloading.

5.3.3.1 – Acoustic Privacy

The proposal to extend delivery hours to 7am to 8pm seven days will not result in any significant adverse acoustic privacy impact to any surrounding residential property or dwelling. Wilkinson Murray has prepared a Noise Assessment Report held at **Appendix A** which concludes that:

“Noise levels at receivers above the shopping centre are predicted to comply with the criteria for delivery between 7.00am and 8.00pm.

Noise levels at the apartment block at 10 Devitt Place are predicted to exceed the intrusiveness noise criterion during evening deliveries. The period of exceedance would be short compared to the full evening period, and if appropriate noise mitigations are incorporated into the delivery procedure and loading dock design, we consider it appropriate to allow a trial period of deliveries during the evening period. Noise would comply with the evening amenity criterion. “

The Noise Assessment Report recommends the following measures to minimise potential noise impacts:

- Refrigeration is to be turned off before trucks enter the driveway access to the loading dock;
- Ensure trucks use reversing cameras rather than reverse beepers;
- Install treatments to the loading dock, including acoustic absorption (e.g. fibreglass) on the ceiling of the loading dock, and reduce any potential gaps between the truck and the loading dock wall; and
- Extend the existing fence along the entire length of the loading dock access path.

These mitigation measures have been included in the Loading Dock Management Plan held at **Appendix C**.

The installation of the fence along the loading dock access path can be undertaken via a Complying Development Certificate.

Council can impose the implementation of the above mitigation measures as a condition of any development consent.

5.3.3.4 – External Lighting

External lighting for deliveries will be required only from sunset until 8pm, which is considered a reasonable time for external lighting to operate.

8.2 - Hillsdale Character Precinct

The desired future character of Hillsdale states that Council should “*Encourage and promote retail activities in the Hillsdale Local Centre and along Bunnerong Road and Flint Street*”. The subject application contributes to the such activities by providing ALDI with flexibility for deliveries which enhances their ease of operation.

4.3 Section 79C(1) Assessment

Section 96(3) of the Act requires the consent authority to take into consideration matters referred to in Section 79C(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 Noise Assessment Report held at **Appendix A** prepared by Wilkinson Murray (dated March 2017) provides an assessment of the potential adverse noise impacts on nearby residential receivers associated with the truck deliveries within the proposed extended delivery schedule.

Wilkinson Murray undertook long term background noise monitoring from the roof of the shopping centre from 6th February to 17th February 2017 as well as short term monitoring on the evening of 20 March 2017. Measurements of a delivery truck which performed a mock delivery cycle at the store, including the approach and departure on Devitt Place, and manoeuvring outside the loading dock were also undertaken by Wilkinson Murray on site on 15 March 2017.

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

- Noise levels at receivers located above the shopping centre are predicted to comply with noise criteria for deliveries between 7am and 8pm.
- Noise levels at the apartment block at 10 Devitt Place are predicted to exceed the intrusiveness noise criterion during evening deliveries (between 6pm and 8pm). However, the period of exceedance would be short compared to the full evening period.
- With appropriate mitigations in place, it is considered acceptable to allow a trial period of evening deliveries with a maximum of one delivery per evening period.
- There still would be exceedances of the intrusiveness noise criterion, those exceedances would be brief, and the amenity criterion would still be satisfied.
- Overall, the proposal will preserve the amenity of the locality.

Traffic Impacts

The proposed extended delivery hours for the ALDI Hillsdale 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 aerial roads.

4.3.2 Suitability of the site for the development

The proposed development aims to provide appropriate measures to maximise efficiencies and economic growth whilst maintaining amenity to surrounding development and is fitting for the B2 Local Centre (under LEP 2013) 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 growth and operation of the Southpoint Shopping Centre. The proposal supports the diversity, integrity and 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 96(2) Modification Application seeks consent for extended delivery hours for the southern loading dock which will be used exclusively by the ALDI Store located within the Southpoint Shopping Centre at the property known as 238-262 Bunnerong Road and 240 Bunnerong Road, Hillsdale (Lot 102 DP 1072389). The proposal seeks to extend delivery hours of the southern loading dock to 7am to 8pm seven days per week including public holidays for use by the ALDI Store. 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, a reasonable noise impact as confirmed by the Noise Assessment Report prepared by Wilkinson Murray held at **Appendix A**. The proposed extended loading dock schedule will ensure the on-going viability of the new ALDI Store through the maximisation of the delivery schedule.

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 development is sought.

Yours sincerely

Milestone (AUST) Pty Limited



Chloe Dunlop
Senior Planner



Lisa Bella Esposito
Director

Encl.

20 September 2017

Chris Mackay
Development Team Leader
PO Box 21,
Rockdale NSW 2216

Attention: Ms Oliva Yana, Development Assessment Planner

Dear Mr Mackay,

**RE: SECTION 96(2) MODIFICATION APPLICATION TO AMEND DA NO. 01/537 TO EXTEND THE DELIVERY HOURS AND AMEND THE LOADING DOCK MANAGEMENT PLAN FOR THE ALDI STORE TENANCY WITHIN SOUTHPOINT SHOPPING CENTRE
238-262 & 240 BUNNERONG ROAD, HILLSDALE (LOT 102 DP 1072389)**

We refer to the above site and the Section 96 Application No. DA No. 2001/537 to allow articulated truck deliveries to the ALDI Store to occur between 7am – 8pm Monday to Sunday, including public holidays on a permanent basis. Milestone (AUST) Pty Limited (Milestone) acts for the operators of the subject tenancy, ALDI Stores (A Limited Partnership) (ALDI). We write in response to the email received by Oliva Yana, Development Assessment Planner dated 14 September 2017 requesting ALDI demonstrate the construction of the suggested further noise mitigation measures outlined in the Noise Assessment prepared by Wilkinson Murray dated March 2017, namely:

- *"Install treatments to the loading dock, including acoustic absorption (eg. Fibreglass) on the ceiling of loading dock, and reduce any potential gaps between the truck and the loading dock wall; and*
- *Extend the existing fence along the entire length of the loading dock access path."*

Proposal

This Section 96 (2) Modification Application seeks to amend Condition 28 of Development Consent No. 01/537 to revise the delivery hours of the southern loading dock to be used by the ALDI Store to be as follows:

- 7am to 8pm Monday to Sunday including public holidays.

A Noise Assessment Report was submitted with the application prepared by Wilkinson Murray Pty Limited (Wilkinson Murray) dated March 2017. Further, a letter also prepared by Wilkinson Murray dated 4 April 2017 confirming that noise from the delivery dock was expected to comply with the EPA recommended noise limits at all residences above the Southpoint Shopping Centre.

Noise Assessment

The acoustic analysis undertaken by Wilkinson Murray dated March 2017 concluded the following:

- The noise generated by delivery trucks for units located directly above the shopping centre are predicted to comply with the criteria for delivery between 7.00pm and 8.00pm.
- High noise levels occur for a short period of time as a delivery truck passes residential properties at 10 Devitt Place.
- The noise generated by the delivery truck exceeds noise criteria for residences at 10 Devitt Place by 15dB at the first floor and above and about 3dB lower for ground floor residences that are shielded by a boundary fence. However, the period of exceedance is short compared to that of a 'full evening period'.
- The draft revisions to the *INP (Industrial Noise Policy)* allows adjustments in exceedance of applicable noise criterion to occur once in any *daytime, evening or night-time period*. The proposal is therefore consistent with this policy.

- With appropriate noise mitigation measures trial period during the evening is appropriate and will continue to preserve residential amenity.

We advise you that ALDI installed a standard loading dock curtain on Thursday 7th September 2017 around the dock to reduce the existing gaps between the truck and the loading dock wall (refer to **Photo 1**).



Photo 1: Loading Dock Curtain to the Southern Loading Dock

In light of the Acoustic Assessment undertaken and the installation of the dock curtain, it is considered that no further noise mitigation measures are required in order to be compliant with the amenity (noise) criterion for the evening. As confirmed in the Response to Submissions prepared by Milestone dated 28 July 2017 (and within the submitted Loading Dock Plan of Management dated March 2017), ALDI will ensure appropriate noise mitigation measures are implemented to mitigate any potential adverse noise impacts on surrounding properties.

Further Mitigation Measures

The Noise Assessment report suggests that actions **could** be taken to mitigate noise further, including:

- Ensure refrigeration is turned off before entry into the access to the loading dock.
- Use of reversing camera rather than reversing beeper.
- Install treatments to the loading dock, including acoustic absorption (eg. Fibreglass) on the ceiling of loading dock, and reduce any potential gaps between the truck and the loading dock wall (dock curtain installed).
- Extend the existing fence along the entire length of the loading dock access path.

Should Council be of the view that the above further measures should be undertaken to extend the fence along the entire length of the loading dock access, Wilkinson Murray has confirmed that the boundary fence between the loading dock path and No. 10 Devitt Place be constructed in the following manner:

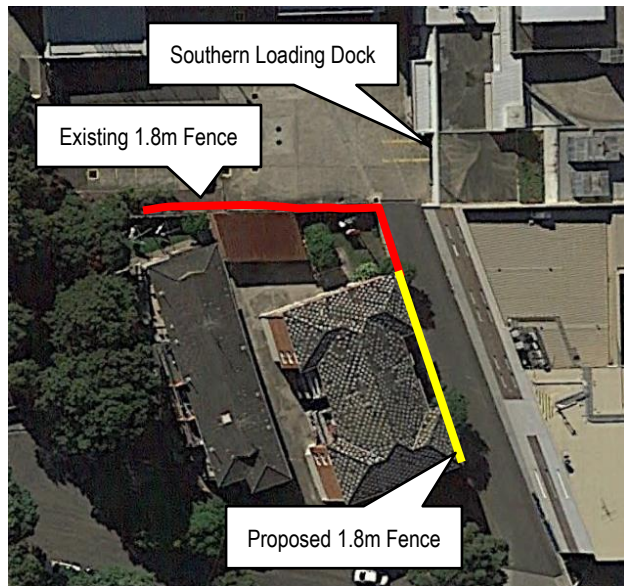


Figure 1: Proposed Boundary Fence Extension (highlighted yellow)

The proposed 1.8m high fence would be constructed to be consistent with Botany Bay Development Control Plan 2013 controls for side and rear fences for residential development, including

- Maximum height of 1.8m.
- Not extend beyond the front building line of the adjoining property.

There will be minimal impacts from the installation of a boundary fence along the length of the loading dock access path. Any overshadowing impacts on No. 10 Devitt Place located west of the loading dock access path will be comparable to any overshadowing as a result of a boundary fence.

Conclusion

In summary, we consider the acoustic analysis outlined within the Noise Assessment prepared by Wilkinson Murray provides sufficient evidence and justification regarding the appropriateness of an extended delivery hours of between 7am-8pm, 7 days) with the relevant noise criterion for the proposed extended period. The extended period can be supported technically without the need for further measures being constructed on the site with mitigation measures outlined in the Noise Assessment Report by Wilkinson Murray dated March 2017 and through the operation management measures outlined in the Loading Dock Management Plan prepared by Milestone dated March 2017.

Should Council seek to impose further mitigation measures to extend the fence along the entire length of the loading dock access to further mitigate potential noise impacts, this can be imposed via condition of any consent notice.

We look forward to your favourable consideration of this matter. Please do not hesitate to contact the undersigned should you require any further information or clarification of the above.

Yours sincerely

Milestone (AUST) Pty Limited

Emmanuel Smith-Aspros
Planner

Lisa Bella Esposito
Director

ALDI HILLSDALE

NOISE ASSESSMENT OF EXTENDED DELIVERY HOURS

REPORT NO. 99204-H2
VERSION A

MARCH 2017

PREPARED FOR

ALDI STORES (A LIMITED PARTNERSHIP)
LOCKED BAG 56
ST MARYS DELIVERY CENTRE NSW 2760

DOCUMENT CONTROL

Version	Status	Date	Prepared By	Reviewed By
A	Final	31 March 2017	George Jenner	Neil Gross

Note

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Quality Assurance

We are committed to and have implemented AS/NZS ISO 9001:2008 "Quality Management Systems – Requirements". This management system has been externally certified and Licence No. QEC 13457 has been issued.



AAAC

This firm is a member firm of the Association of Australasian Acoustical Consultants and the work here reported has been carried out in accordance with the terms of that membership.



Celebrating 50 Years in 2012

Wilkinson Murray is an independent firm established in 1962, originally as Carr & Wilkinson. In 1976 Barry Murray joined founding partner Roger Wilkinson and the firm adopted the name which remains today. From a successful operation in Australia, Wilkinson Murray expanded its reach into Asia by opening a Hong Kong office early in 2006. Today, with offices in Sydney, Newcastle, Wollongong, Orange, Queensland and Hong Kong, Wilkinson Murray services the entire Asia-Pacific region.



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APPENDIX A – Noise Measurement Results

GLOSSARY OF ACOUSTIC TERMS

Most environments are affected by environmental noise which continuously varies, largely as a result of road traffic. To describe the overall noise environment, a number of noise descriptors have been developed and these involve statistical and other analysis of the varying noise over sampling periods, typically taken as 15 minutes. These descriptors, which are demonstrated in the graph below, are here defined.

Maximum Noise Level (L_{Amax}) – The maximum noise level over a sample period is the maximum level, measured on fast response, during the sample period.

L_{A1} – The L_{A1} level is the noise level which is exceeded for 1% of the sample period. During the sample period, the noise level is below the L_{A1} level for 99% of the time.

L_{A10} – The L_{A10} level is the noise level which is exceeded for 10% of the sample period. During the sample period, the noise level is below the L_{A10} level for 90% of the time. The L_{A10} is a common noise descriptor for environmental noise and road traffic noise.

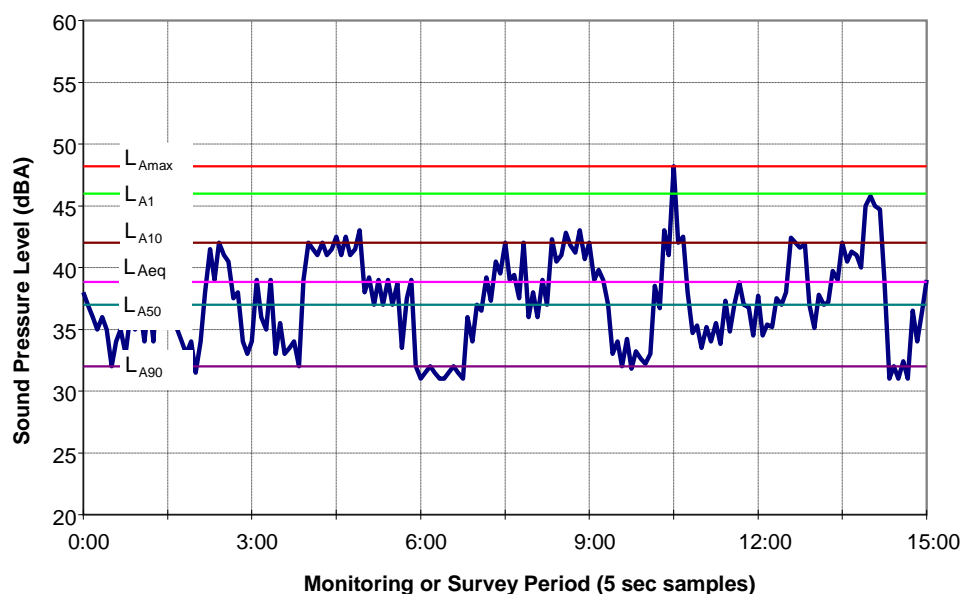
L_{A90} – The L_{A90} level is the noise level which is exceeded for 90% of the sample period. During the sample period, the noise level is below the L_{A90} level for 10% of the time. This measure is commonly referred to as the background noise level.

L_{Aeq} – The equivalent continuous sound level (L_{Aeq}) is the energy average of the varying noise over the sample period and is equivalent to the level of a constant noise which contains the same energy as the varying noise environment. This measure is also a common measure of environmental noise and road traffic noise.

ABL – The Assessment Background Level is the single figure background level representing each assessment period (daytime, evening and night time) for each day. It is determined by calculating the 10th percentile (lowest 10th percent) background level (L_{A90}) for each period.

RBL – The Rating Background Level for each period is the median value of the ABL values for the period over all of the days measured. There is therefore an RBL value for each period – daytime, evening and night time.

Typical Graph of Sound Pressure Level vs Time



1 INTRODUCTION

A new ALDI store is proposed within the Southpoint Shopping Centre at 238-262 Bunnerong Road, Hillsdale.

This report supports a Section 96 Modification Application to modify Condition 28 of Notice of Determination No. DA01/537 which currently restricts the hours of the southern loading dock to the following:

- Monday to Friday – 7.00am to 6.00pm;
- Saturday – 7.00am to 6.00pm;
- Sunday and Public Holidays – 10.00am to 5.00pm.

ALDI wish to seek an extension to the approved delivery hours to allow for deliveries to occur between 7.00am to 8.00pm, 7 days.

2 SITE DESCRIPTION

The shopping centre is located at Bunnerong Road, Hillsdale, as shown in Figure 2-1.

The loading dock is in the south west corner of the shopping centre. There are residences in the same building above the shopping centre where residential balconies are potentially impacted by the loading dock. The nearest is shown on the figure as Location 1. The nearest residences outside the shopping centre building are at 10 Devitt Place, marked as Location 2 on Figure 2-1. The figure also shows the location of the noise logger used to determine existing ambient noise levels in the area, to be discussed in Section 3.

The access to the loading dock is shown on Figure 2-2. The path of the trucks accessing the dock passes close to the residences at Location 2 on both the entry and exit from the dock. The Figure also shows noise measurement locations, A and B, where noise from delivery was measured.

Figure 2-3 shows the view from the loading dock to receiver Location 2. The dock itself is approximately 15m deep, as shown on Figure 2-4.

Figure 2-1 Location and Residential Receivers

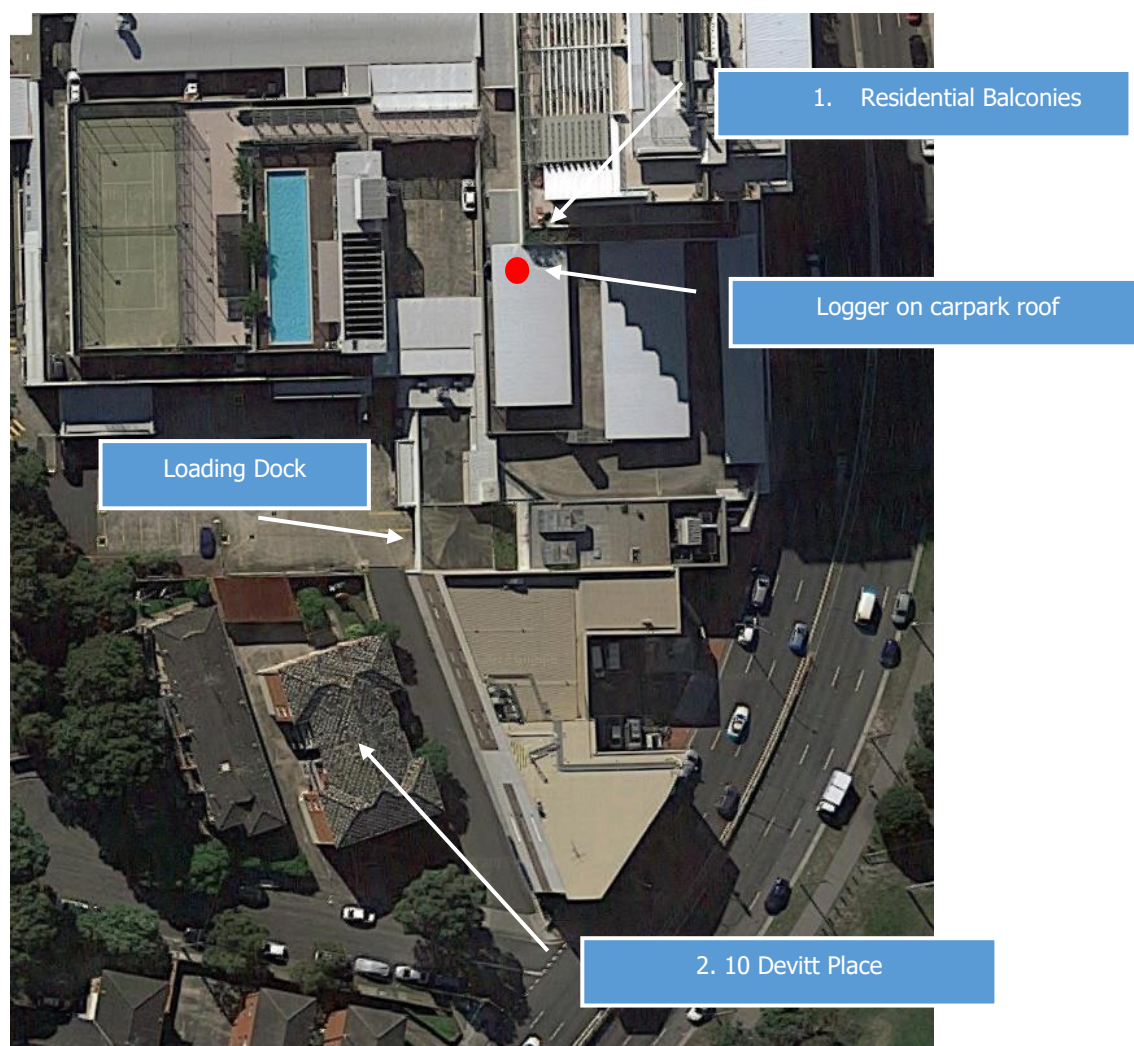


Figure 2-2 Truck Approach to Loading Dock

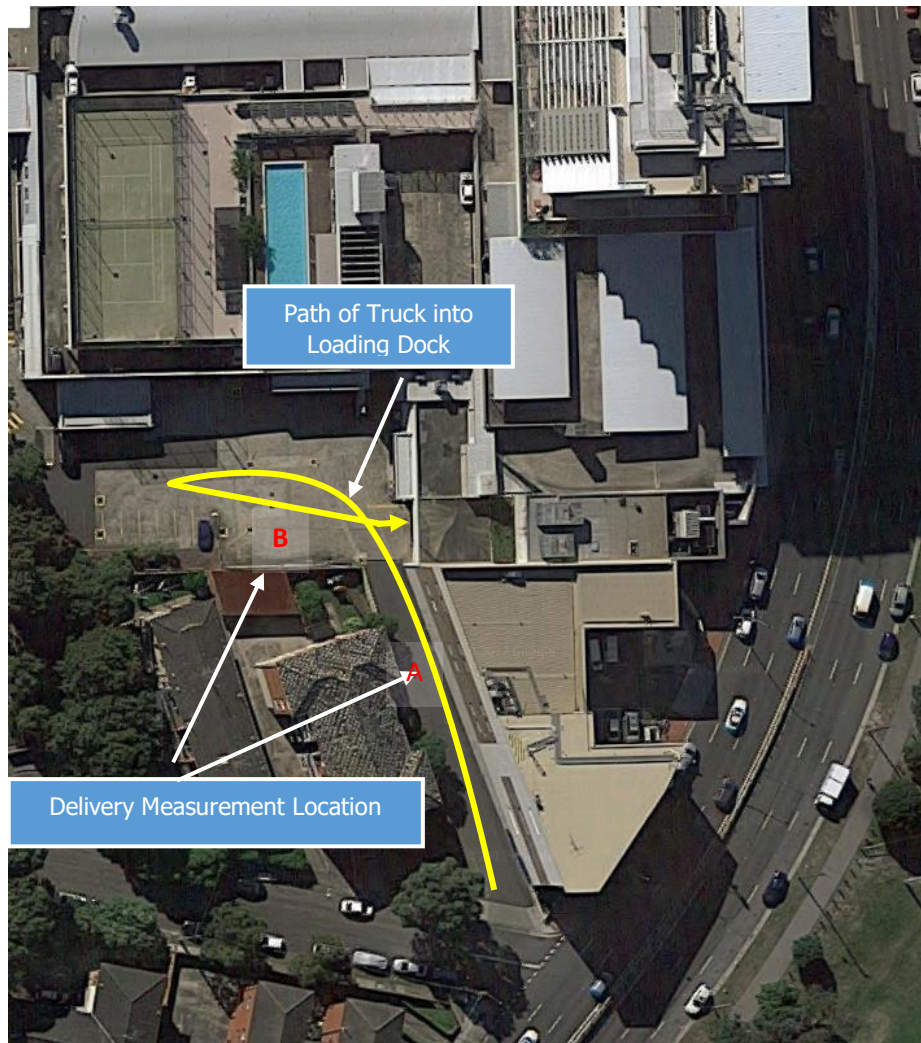


Figure 2-3 View from Dock Entry to Receiver Location 2



Figure 2-4 Interior of Dock



3 NOISE CRITERIA

3.1 Environment Protection Authority

Noise goals are based on the following guidelines of the NSW Environment Protection Authority (EPA):

- *Noise Guide for Local Government (NGLG)*
- *Industrial Noise Policy (INP) + Application Notes* (December 2010)

3.1.1 Intrusiveness Criterion

An intrusiveness criterion is used to assess continuous or semi-continuous events and applies for residential receivers only.

The intrusiveness criterion requires that the L_{Aeq} noise level from the source being assessed, when measured over 15 minutes, should not exceed the Rating Background Noise Level (RBL) by more than 5dBA. The RBL represents the 'background' noise in the area, and is determined from measurement of L_{A90} noise levels, in the absence of noise from the source.

3.1.2 Amenity Criterion

The amenity criterion sets a limit on the total noise level from *all industrial noise sources* affecting a receiver. Different criteria apply for different types of receiver; different areas (e.g. rural, suburban); and different time periods. The amenity criterion is assessed over the entire day, evening or night time period.

This area would be classed as urban – the acceptable and recommended maximum criteria are listed in Table 3-2.

3.2 Long-Term Monitoring of Ambient Noise Levels

Noise levels were monitored on the roof of the shopping centre from 6 to 17 February 2017. The logger was located on the rooftop carpark as indicated on Figure 2-1. There was some rain during the period of logging and data analysis showed that measurements from 15, 16 and 17 February should be discarded. The full logger charts are shown in Appendix A.

The noise monitoring equipment used for these measurements consisted of environmental noise loggers set to A-weighted, fast response, continuously monitoring over 15-minute sampling periods. This equipment is capable of remotely monitoring and storing noise level descriptors for later detailed analysis. The equipment calibration was checked before and after the survey and no significant drift was noted.

The logger determines L_{A1} , L_{A10} , L_{A90} and L_{Aeq} levels of the ambient noise. L_{A1} , L_{A10} and L_{A90} are the levels exceeded for 1%, 10% and 90% of the sample time respectively (see Glossary of Acoustic Terms for definitions). The L_{A1} is indicative of maximum noise levels due to individual noise events, such as the occasional pass-by of a heavy vehicle. This is used for the assessment of sleep disturbance. The L_{A90} level is normally taken as the background noise level during the relevant period.

A summary of background noise results is given in Table 3-1; refer to Appendix A. The background noise was generally due to traffic on Bunnerong Road, but as the L_{A90} is constant through the day there is probably some component of mechanical services noise from the shopping centre.

Table 3-1 RBL Background Noise Levels

Day 7am-6pm	Evening 6pm-10pm	Night 10pm-7am
44	44	44

3.3 Short-Term Monitoring of Ambient Noise Levels

The longer term monitoring is most applicable to residences above the shopping centre. To confirm that the measurements are also suitable for application to residences at 20 Devitt Place, receiver location to, short-term measurements were done during the evening of 20 March 2017.

All measurements were conducted using an Nti Type XL2 Sound Level Meter. This sound level meter conforms to Australian Standard 1259 *Acoustics – Sound Level Meters* as a Type 1 Precision Sound Level Meter which has an accuracy suitable for field and laboratory use. The A-Weighting filter of the meter was selected and the time weighting was set to "Fast". The calibration of the meter was checked before and after the measurements with a Bruel and Kjaer Type 4231 sound level calibrator and no significant drift was noted.

The XL2 and 4231 have been laboratory calibrated within the previous 2 years in accordance with our in-house Quality Assurance Procedures.

Measurement at 8.00pm showed an L_{A90} of 44 dBA at ground level in Devitt Place. This is the same as the evening measurement during the long-term monitoring, and it is considered that the long-term monitoring results are applicable to assessment at Receiver 2.

3.4 Summary of Noise Criteria

RBLs listed in Table 3-1 have been used to set the Intrusiveness Criteria as shown in Table 3-2.

Table 3-2 Noise Criteria at all Receivers

Descriptor	Day 7am-6pm	Evening 6pm-10pm	Night 10pm-7am
RBL	44	44	44
	49	49	49
Amenity (acceptable) $L_{Aeq,period}$ dBA	60	50	45
Amenity (maximum) $L_{Aeq,period}$ dBA	65	55	50

4 MEASUREMENT OF NOISE LEVELS

Measurements of a delivery vehicle were conducted on site on 15 March 2017. The delivery vehicle was representative of the maximum 17.6m vehicles that will be used at this dock. The truck performed a mock delivery cycle at the store, including the approach and departure on Devitt Place, and manoeuvring outside the loading dock.

While the mock delivery took place, measurements were done at two locations representative of the nearest residential receivers at Location 2. The measurement locations were as shown on Figure 2-1. Location A was measured using an NTi sound level meter, with the microphone located 4m off the ground in order to assess noise at the level of the first floor windows which are not shielded by the boundary fence.

Location 2 was measured using a Ngara noise monitor with the microphone located one and a half metres from the ground. While less useful for direct assessment of noise to residences, the results will be used in calibrating the noise model used to predict noise at all receivers.

The results of the measurement are shown in Table 4-1. The different stages of the vehicle movement were of different duration, and each stage has been adjusted to a 15 minute level to allow comparison to the intrusiveness criterion.

Table 4-1 Noise Levels of Delivery $L_{Aeq,15min}$

Receiver	Drive In	Reversing	Idling	Idling, Refrigeration Off	Drive Out	Total
A	61	59	61	51	63	70
B	41	62	61	50	65	68
Duration (seconds)	80	85	90	80	92	427

5 PREDICTED NOISE LEVELS

For noise levels at receivers where measurements could not be carried out, noise levels were predicted.

Noise levels were modelled using the Predictor noise modelling software which takes into account the source sound power level, distance to receivers and any shielding by intervening buildings or fences. Source sound levels determined previously at ALDI loading docks are shown on Table 5-1. Purpose-built ALDI loading docks are made so that the rear of the truck fills the dock opening, effectively shielding much of the noise from unloading the truck. In this case, the opening is larger, however, the dock is quite deep, so the same Sound Power Level is considered appropriate. Table 5-2 shows predicted noise levels for 15 minute scenarios that include a truck entry and unloading activity, or unloading activity and truck exit. The table also shows the level determined from measurement at Location A, which shows good agreement with the prediction.

Table 5-1 Intrusive Noise Sound Power Level

Operations	L _{Aeq,15min} dBA
Truck Forward	73/m
Truck Reverse	76/m
Dock	87

Table 5-2 Predicted Noise Levels, L_{Aeq,15min} dBA

Receiver	Scenario	Predicted by Noise Model	Predicted from Measurements	Criterion
1	Deliver Truck In + Dock	63	64 ¹	49
	Delivery Truck Out + Dock	63	64 ¹	49
2	Deliver Truck In + Dock	31 (lowest level above shops) 45 (fifth level higher above shops)	Not measured	49
	Delivery Truck Out + Dock	31 (lowest level above shops) 45 (fifth level higher above shops)	Not measured	49

Note: 1. The "predicted from measurements" level assumes refrigeration is turned off, and only 1 entry or exit in any 15-minute period.

6 ASSESSMENT

Table 5-2 shows that the noise levels from delivery at residences in 10 Devitt Place would exceed the intrusiveness criterion by up to 15dBA for each delivery events. The worst case is on levels 1 and above which are unshielded by the boundary fence. Ground floor apartments would experience noise levels approximately 3dBA lower.

This occurs because the access to the dock is directly adjacent to the residential façade and it is the only access point to the loading dock. The high noise levels occur for a short period of time as the truck passes.

While an exceedance is predicted, we note that deliveries would not be frequent events. The *INP* allows an adjustment to noise levels which occur only once in a 24-hour period. The adjustment depends on the duration of the noise but could be an allowance of 20dB for an event which occurs for less than 1.5 minutes. In this case, delivery events, including truck entry, unloading, and truck exit, would be expected to last between 50 minutes to 1 hour, which would lead to a duration adjustment of 5dBA which would reduce the predicted noise level to 10dBA above the criterion.

The current *INP* allows this adjustment if the event occurs only once in a 24-hour period which would not be the case for the delivery dock. However, the draft revision to the *INP* allows this adjustment for events which occur once in any daytime, evening or night time period, hence it would be applicable to a single delivery in the evening period from 6.00pm to 10.00pm.

The amenity criterion for evening is 50-55dBA. The predicted L_{Aeq} over the entire evening period at Location 1 is $L_{Aeq,4hr}$ 55 for a single delivery, including truck arrival and departure, and unloading. This complies with the recommended maximum amenity level. Therefore the overall noise emission for the evening period is considered suitable for an urban environment, even if there are short periods of intrusive noise.

Some actions could be taken to mitigate noise further. For example:

- Ensure that refrigeration is turned off before entry into the access to the loading dock;
- Use of reversing camera rather than reverse beeper;
- Install treatments to the loading dock, including acoustic absorption (e.g. fibreglass) on the ceiling of the loading dock, and reduce any potential gaps between the truck and the loading dock wall;
- Extend the existing fence along the entire length of the loading dock access path.

With appropriate mitigations in place, we would consider it acceptable to allow a trial period of evening deliveries with a maximum of one delivery per evening period. While there still would be exceedances of the intrusiveness noise criterion, those exceedances would be brief, and the amenity criterion would still be satisfied.

7 CONCLUSION

ALDI seeks to extend the delivery hours at the Hillsdale store to 8.00pm. Wilkinson Murray conducted measurements of an example delivery with a truck arriving, reversing into the dock and departing the loading dock.

It was found that the noise from the delivery truck was consistent with noise levels previously measured and noise modelling of the dock.

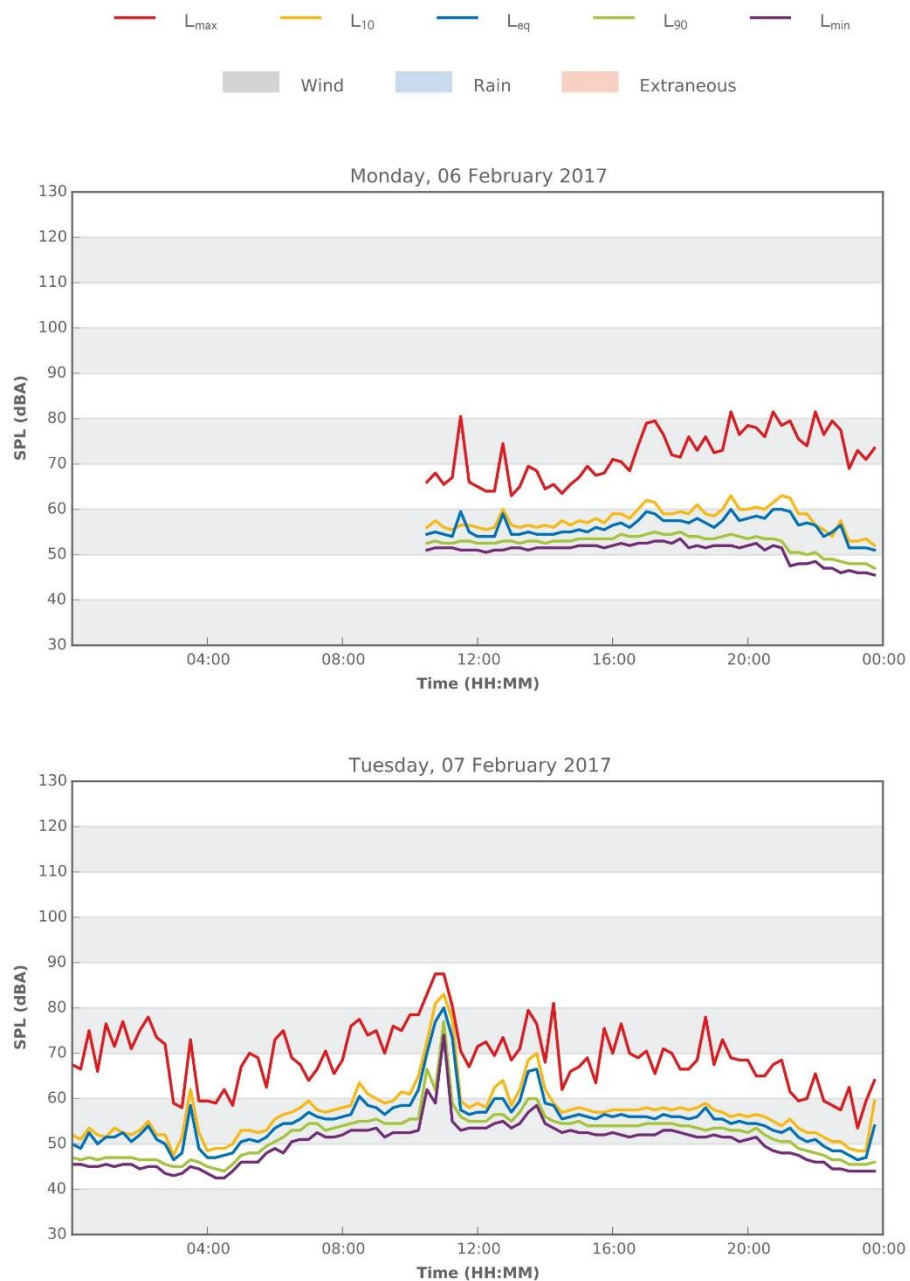
Noise levels at receivers above the shopping centre are predicted to comply with the criteria for delivery between 7.00am and 8.00pm.

Noise levels at the apartment block at 10 Devitt Place are predicted to exceed the intrusiveness noise criterion during evening deliveries. The period of exceedance would be short compared to the full evening period, and if appropriate noise mitigations are incorporated into the delivery procedure and loading dock design, we consider it appropriate to allow a trial period of deliveries during the evening period. Noise would comply with the evening amenity criterion.

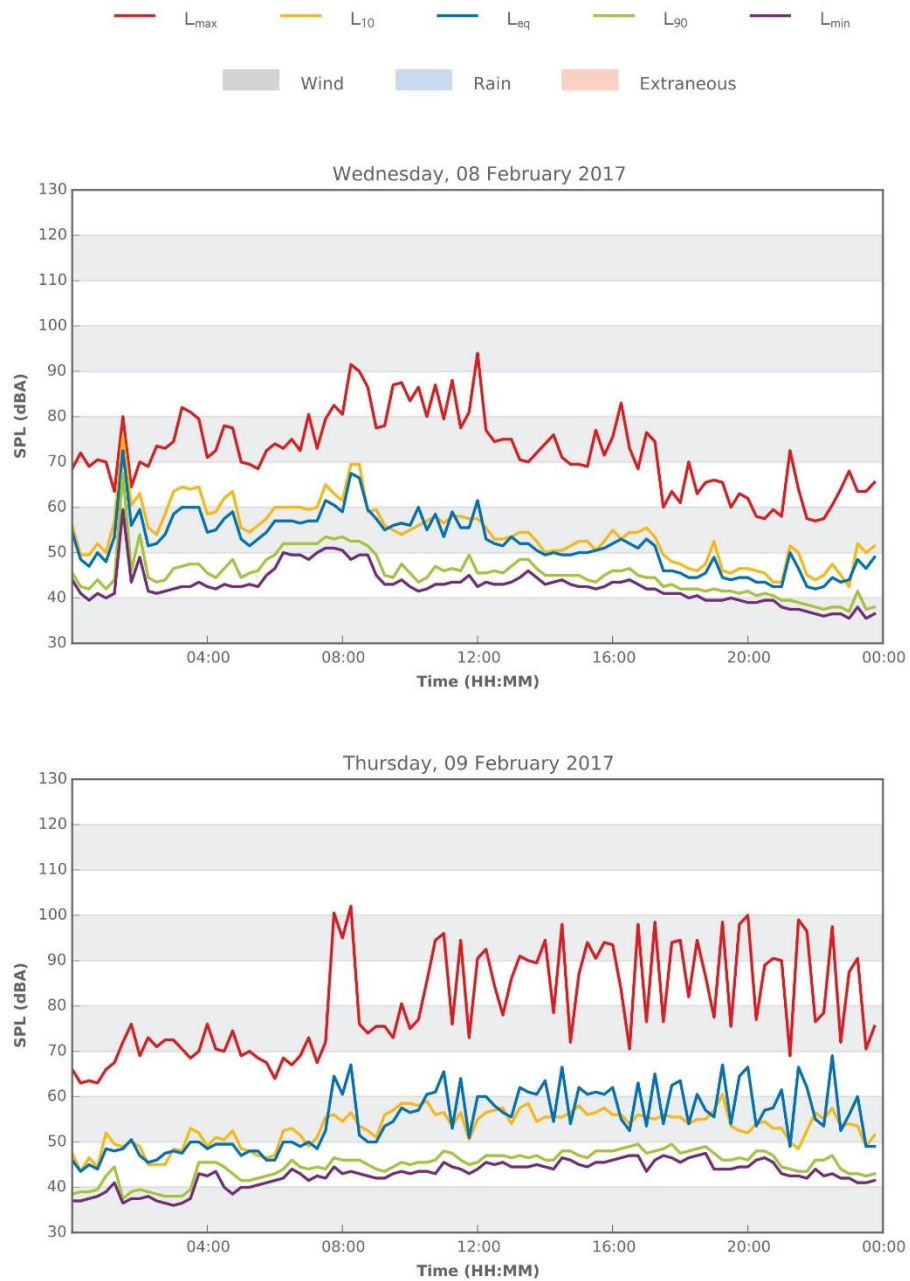
APPENDIX A

NOISE MEASUREMENT RESULTS

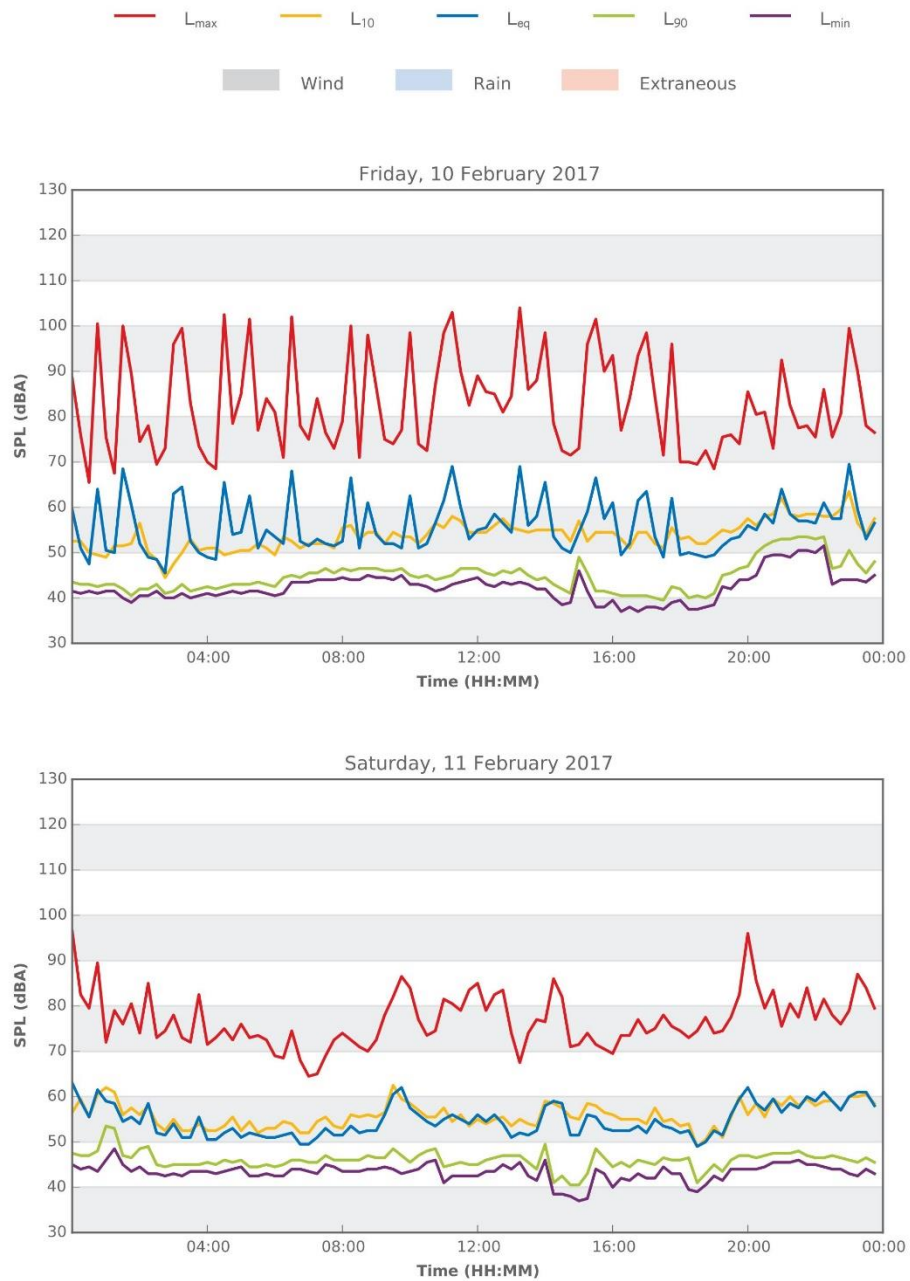
240 Bunnerong Road, Hillsdale



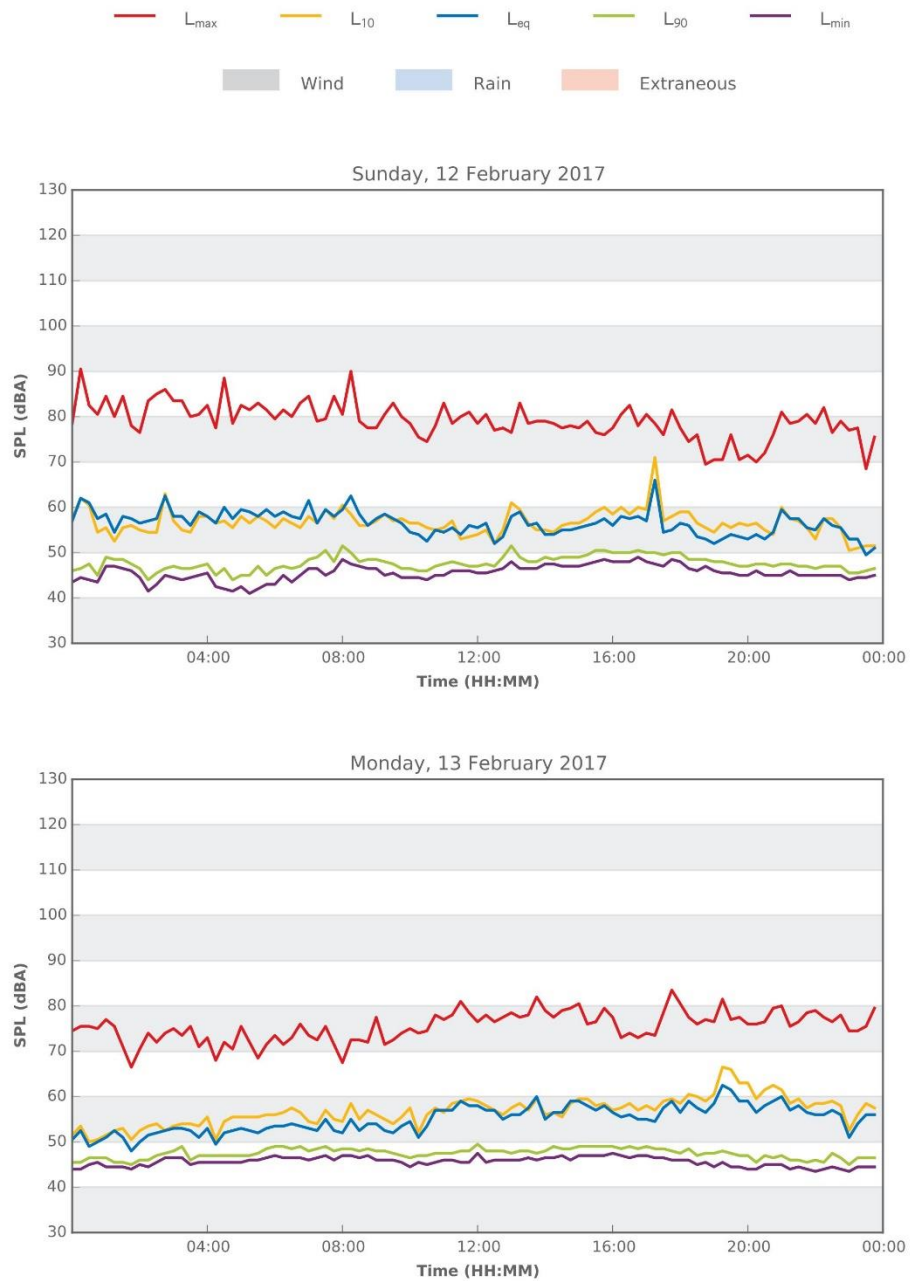
240 Bunnerong Road, Hillsdale



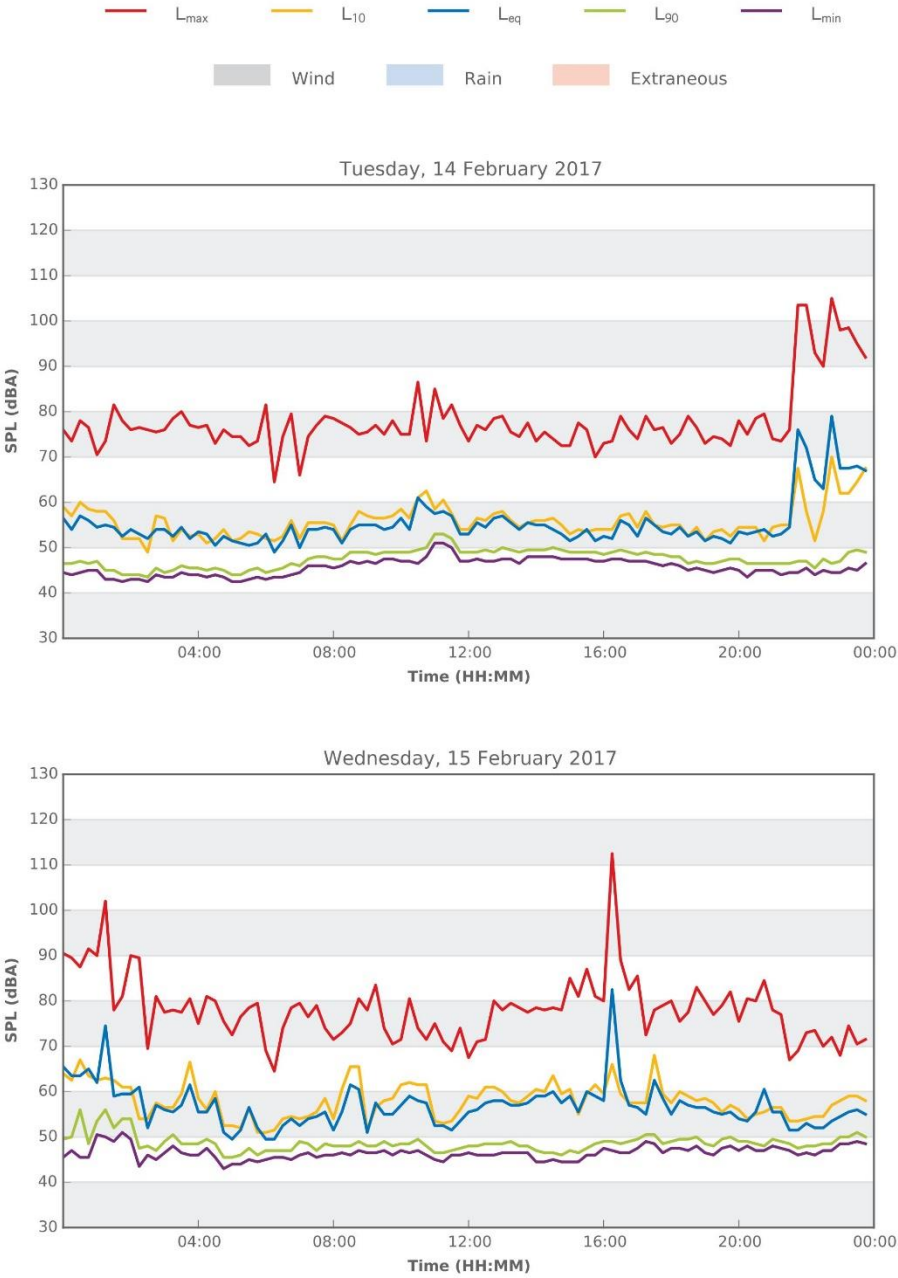
240 Bunnerong Road, Hillside



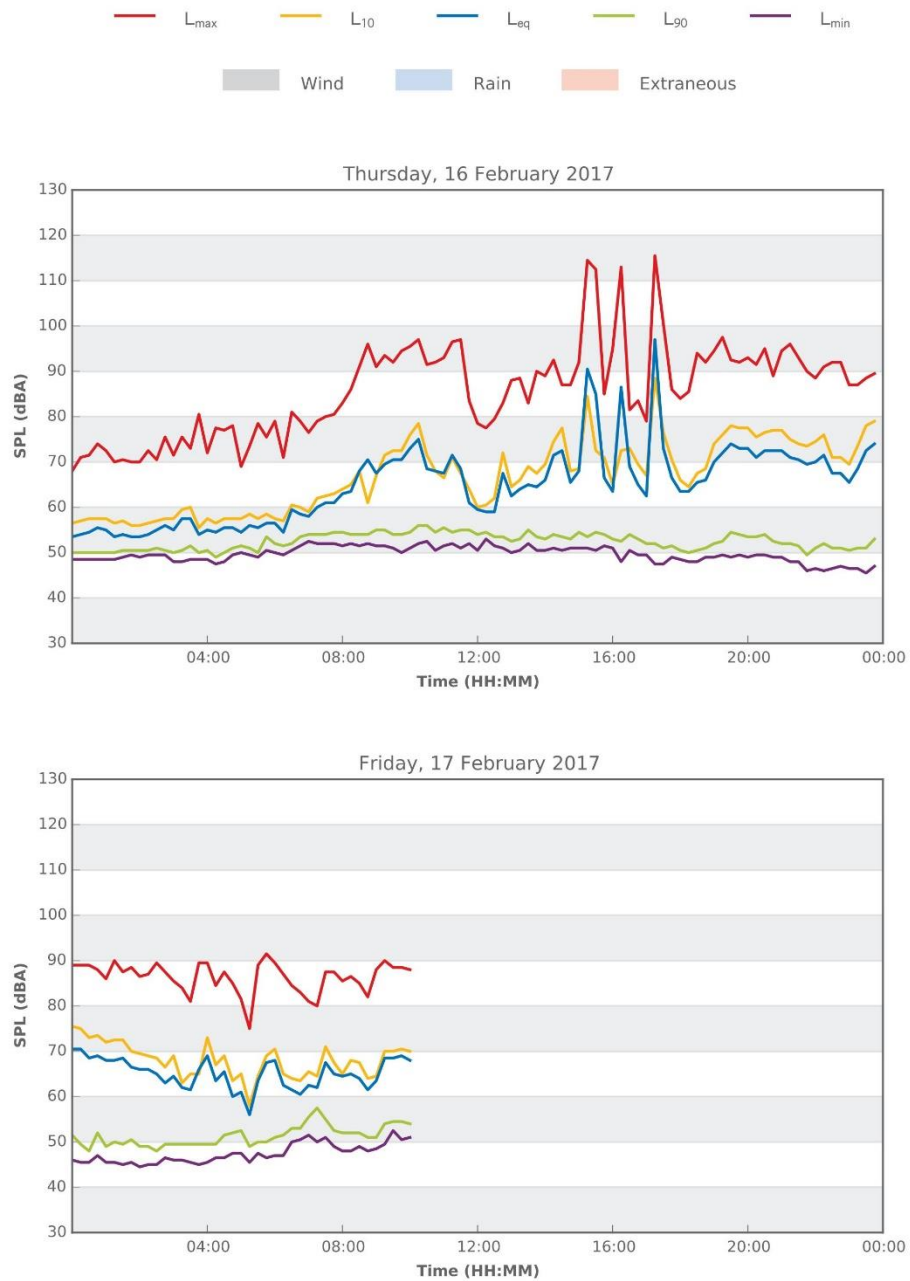
240 Bunnerong Road, Hillsdale



240 Bunnerong Road, Hillsdale



240 Bunnerong Road, Hillsdale



**LOADING DOCK MANAGEMENT PLAN
ALDI HILLSDALE
238-262 BUNNERONG ROAD, HILLSDALE (LOT 102 DP 1072389)**

MARCH 2017

1.0 INTRODUCTION

This Loading Dock Management Plan has been prepared by Milestone (AUST) Pty Limited (Milestone) on behalf of ALDI (A Limited Partnership) (ALDI) to accompany a Section 96(2) Modification Application. This Loading Dock Management Plan has been prepared with consideration to Council's Development Control Plan and a Noise Assessment Report prepared by Wilkinson Murray Pty Limited (Wilkinson Murray) dated March 2017.

2.0 OPERATIONAL DETAILS

2.1 Delivery Hours

In accordance with Condition No. 28 of Notice of Determination 01/537 deliveries to the ALDI Store are currently permitted as follows:

"Hours of operation for both loading docks, i.e. the northern and southern loading docks for the development shall be as follows:

- | | | |
|-----|----------------------------|--------------------|
| a) | Monday to Friday | 7.00am to 6.00pm |
| (b) | Saturday | 7.00am to 6.00pm |
| (c) | Sunday and Public Holidays | 10.00am to 5.00pm" |

This Section 96(2) Modification Application seeks to extend the delivery schedule to allow deliveries from 7.00am to 8.00pm, seven days per week to the southern loading dock to be used exclusively by the ALDI Store.

2.2 Location and Delivery Vehicle Access

The ALDI loading dock bay is located at the southern end of the site and is accessed from the south-eastern corner of the site, via a driveway from Devitt Place (refer to **Figure 1**).

All loading and unloading to the ALDI Store will be carried out in the loading bay located to the south of the building. Delivery trucks access the ALDI Store loading dock via Bunnerong Road and Devitt Place, before entering a driveway from Devitt Place. The trucks enter and leave the site in a forward direction with turning space adjacent to the loading dock.

2.3 Number and Type of Deliveries per day

The ALDI Store will have up to three deliveries (17.6m length truck for groceries and household goods) and one rigid vehicle delivery (for bread) each day to the existing approved ALDI Store loading dock area. The largest delivery truck associated with the ALDI Store is 17.6m in length.

This Section 96(2) Modification Application seeks consent for deliveries to the southern loading dock between 7.00am and 8.00pm, 7 days per week.

Only one ALDI Store delivery truck will service the ALDI loading dock at any one time.

A Noise Assessment Report has been prepared by Wilkinson Murray dated March 2017 and confirms that the impact to surrounding properties is acceptable. On this basis, it is requested that the wording of Condition No. 28 of 01/537 is amended to reflect the new loading dock hours and delivery arrangements for the ALDI Store.



Figure 1: Site Location

Source: NSW Land and Property Information SIX Maps, 2017

2.4 Delivery Procedure

The proposed delivery procedure to the ALDI loading dock area is as follows:

- ALDI delivery vehicle enters the site from Devitt Place and drives up the driveway to the ALDI loading dock area.
- The delivery vehicle reverses into the ALDI loading dock and truck unloading commences (approximately 14 minutes).
- The driver exits the vehicle and enters the building to open the roller shutter door to the ALDI loading dock area.
- The delivery vehicle departs the site via Devitt Place and Bunnerong Road.

ALDI has developed and implemented the following delivery procedures to control noise and other emissions from deliveries to the ALDI Hillsdale Store:

- All drivers are contracted on condition that they comply with ALDI standards of behaviour, performance and appearance, including the control of noise and other emissions and consideration of others.
- The delivery vehicle will comply with RMS regulations and are fitted with rear-facing video monitoring systems to provide full views of reversing and docking procedures. This eliminates the requirement for reversing alarms.
- All trailer refrigeration equipment complies with State noise regulations and can be switched off by the driver when entering the site in order to reduce noise emissions.
- The delivery vehicle is backed up to store loading dock bay and fills the entire dock opening. All loading and unloading is carried out directly from the rear of the truck trailer onto the loading dock landing, and pallet movements are not visible from any public areas. Any offloading noise is minimised by the close fit of the truck trailer into the dock opening.

2.5 Management of ALDI Delivery Vehicles and ALDI Loading Dock

The ALDI Store is a key retail tenant of the site and is the only tenant within the Southpoint Shopping Centre using the ALDI loading dock bay (the southern loading dock). All delivery vehicles are company controlled and delivery vehicle movements are tracked and monitored by ALDI using a GPS tracking system. The ALDI Store Manager coordinates all deliveries to the ALDI Store and will ensure strict adherence to the delivery schedule. All ALDI delivery personnel are thoroughly trained on the equipment used, store locations and access.

After a delivery, the loading dock will be secured by the roller shutter door.

2.6 Noise Mitigation Measures

In addition to the above procedures, the following management procedures are proposed to ensure that any noise from deliveries is minimised, as recommended by the Noise Report prepared by Wilkinson Murray dated March 2017:

- Refrigeration is to be turned off before trucks enter the driveway access to the loading dock;
- Ensure trucks use reversing cameras rather than reverse beepers;
- Install treatments to the loading dock, including acoustic absorption (e.g. fibreglass) on the ceiling of the loading dock, and reduce any potential gaps between the truck and the loading dock wall; and
- Extend the existing fence along the entire length of the loading dock access path.

Council can impose as a condition on any development consent the implementation of the above mitigation measures in addition to the existing Condition 28 of Development Consent No. 01/537 restricting offensive noise.

MILESTONE (AUST) PTY LIMITED