
Bayside Planning Panel

14/12/2017

Item No	6.1
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 Saturday, and 8.00am to 8.00pm on Sunday and 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 – first round of notification (2 June to 16 June 2017) Four (4) submissions – second round of notification (3 November to 17 November 2017)
Cost of Development	\$0
Report by	Olivia Yana, Acting Senior Development Assessment Planner

Officer Recommendation

- 1 That Section 96(2) Application 2001/537/16 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 Saturday, and 8.00am to 8.00pm on Sunday and 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:
 - a. 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.
 - b. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal does not meet the objective 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.

- c. 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:
 - i. Part 5.3.2.8 – Interface between Business Zones and Adjoining Landuses; and
 - ii. Part 5.3.3.1 – Acoustic Privacy.
- d. 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.
- e. 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.
- f. Pursuant to Section 96(2)(a) of the Environmental Planning and Assessment Act 1979, the proposed installation of air conditioning units at the adjoining property 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.
- g. 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.
- h. The proposal fails to satisfy the provision of Section 115(1)(h) of the Environmental Planning and Assessment Regulation 2000, as owners’ consent is yet to be provided for the proposed works to install air conditioning units to the adjoining property.

2 That the objectors be advised of the Bayside Planning Panel’s decision.

Attachments

- 1 Supplementary Planning Assessment Report
 - 2 Applicant’s Response to Bayside Planning Panel Resolution Dated 26 October 2017.
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Location Plan

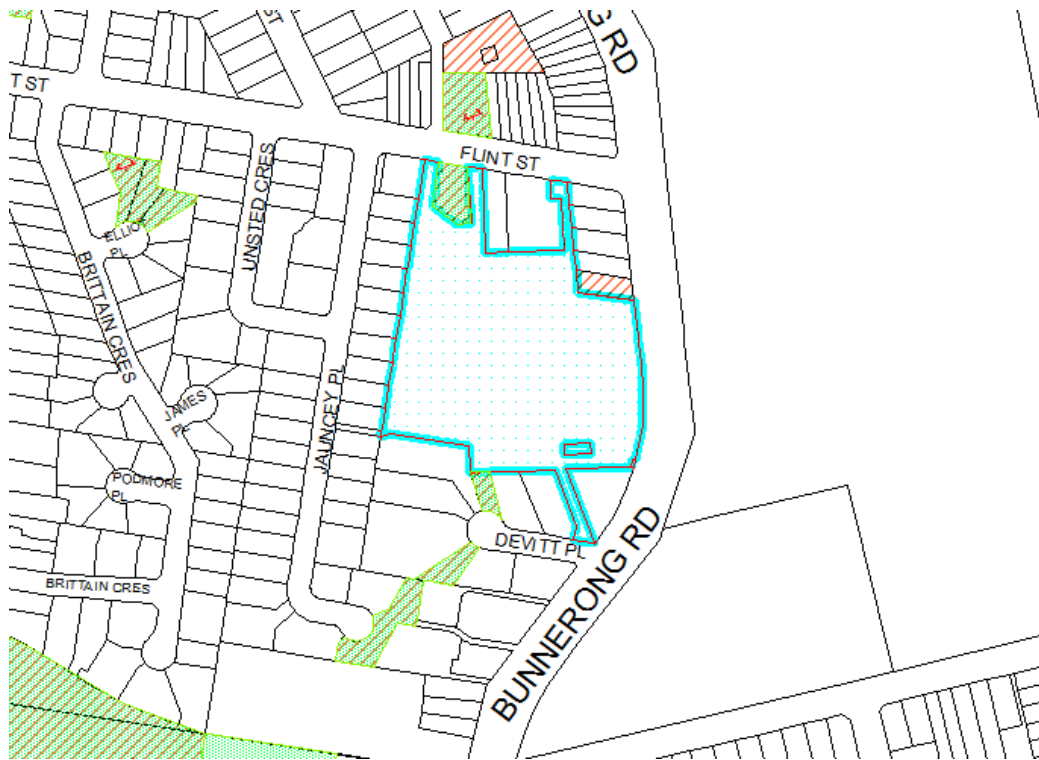


Figure 1: Locality Plan (subject site outlined in blue)

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 Saturday, and 8.00am to 8.00pm on Sunday and Public Holidays; and to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store.
Recommendation:	Refused
No. of submissions:	Thirteen (13) submissions – first round of notification (2 June to 16 June 2017) Four (4) submissions – second round of notification (3 November to 17 November 2017)
Author:	Olivia Yana, Acting Senior Development Assessment Planner
Date of Report:	21 November 2017

Key Issues

On 10 October 2017, the subject Section 96 Application was referred to the Bayside Planning Panel (BPP) for its determination.

The Panel resolved as follows:

That this application be deferred to allow the applicant to provide further details in regard to revised measures which reduce the noise impacts so as to reasonably satisfy the objective to create a highly-liveable urban place and satisfy the original development consent outcomes.

Additional information to the Section 96(2) Application to modify Development Consent No. 2001/537 was received on 27 October 2017, which now seeks to amend Condition No. 28 to permit the following hours for the southern loading dock: 7.00am to 8.00pm Monday to Saturday, and 8.00am to 8.00pm on Sunday and Public Holidays; to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store; and to install an air conditioning unit to each of the twelve property owners at No. 10 Devitt Place. In the event that the offer for air conditioning unit installation is not accepted, a 1.8 metre high fence is to be erected on the western boundary.

Previously, the Section 96(2) Application to modify Development Consent No. 2001/537 sought 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.

This Supplementary Report provides a response to the amended information provided by the applicant to address the outstanding matters raised by the Panel as well as the issues identified in the submissions received as part of the re-notification process.

The revised measures proposed would not result in the attenuation of noise at its source. Nonetheless, it is seeking to install air conditioning units at the adjoining property 10 Devitt Place and to allow the use of the southern loading dock exclusively for the Aldi Store. These proposed noise mitigation measures are carried out in isolation without consideration of further amenity impacts from the installation of mechanical ventilation and the adjoining existing land uses.

The proposal fails to demonstrate a reduction in the noise impact to satisfy the Panel recommendation in creating a highly-liveable urban place and the original development consent outcomes.

The proposed extension of the Aldi Store's southern loading dock operating hours cannot be supported and the proposal is therefore recommended for REFUSAL.

Recommendation

- 1 That Section 96(2) Application 2001/537/16 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 Saturday, and 8.00am to 8.00pm on Sunday and 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:
 - a. 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.
 - b. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal does not meet the objective 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.
 - c. 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:
 - i. Part 5.3.2.8 – Interface between Business Zones and Adjoining Landuses; and

- ii. Part 5.3.3.1 – Acoustic Privacy.
 - d. 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.
 - e. 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.
 - f. Pursuant to Section 96(2)(a) of the Environmental Planning and Assessment Act 1979, the proposed installation of air conditioning units at the adjoining property 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.
 - g. 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.
 - h. The proposal fails to satisfy the provision of Section 115(1)(h) of the Environmental Planning and Assessment Regulation 2000, as owners’ consent is yet to be provided for the proposed works to install air conditioning units to the adjoining property.
- 2 That the objectors be advised of the Bayside Planning Panel’s decision.

Assessment of Applicant’s Response

The Panel deferred the subject application to allow the applicant to provide further details in regard to revised measures to reduce the noise impacts so as to reasonably satisfy the objective to create a highly-liveable urban place and satisfy the original development consent outcomes.

The applicant has provided the following response.

1. The Outcome of Noise Assessment Report;

The report particularly addresses the noise impact associated with extended hours as follows.

- a) Monday – Saturday 6.00pm – 8.00pm
- b) Sunday and Public Holidays 8.00am – 10.00am and 5.00pm – 8.00pm

The installation of 1.8 metre high Colorbond fence will reduce the noise level at the ground floor of the apartment building, however not the first and second floor levels.

To ensure compliance with the 49dBA criterion at all floors of the apartment building, it would require the following measures (refer to Figure 1).

- a) A 4.5 metre barrier near the boundary along the length of the access lane with a 5 metre horizontal section (roof) partly over the lane. The 5 metre horizontal section could be supported on a structure which could extend across the lane and may be fixed to the existing shopping centre building (refer to Figure 2); and
- b) A 4.5 metre noise barrier on the boundary between the dock and the apartments with a 2 metre cantilevered section extending out over the dock turning area at 45 degrees (refer to Figure 3).

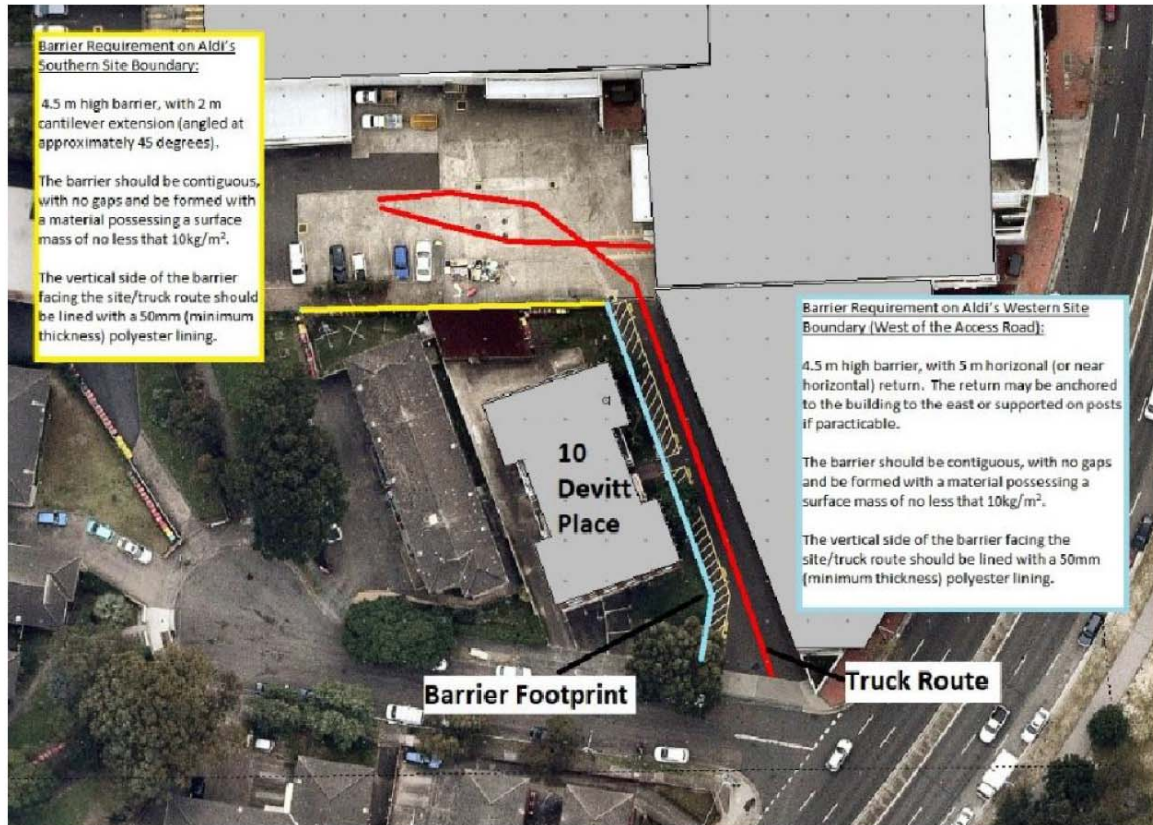


Figure 1 – Site Plan

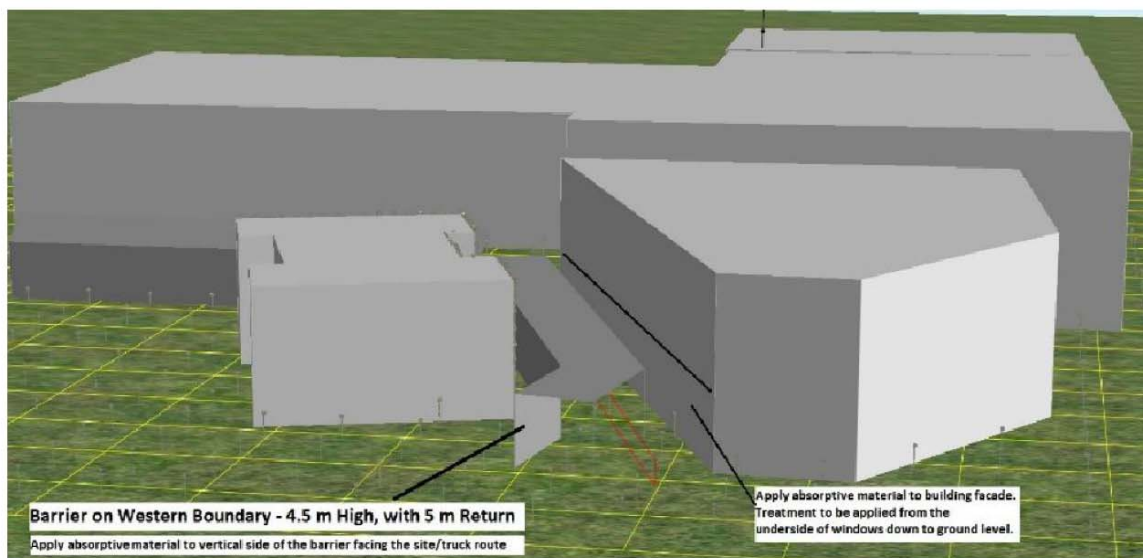


Figure 2 – Barrier on the Western Boundary

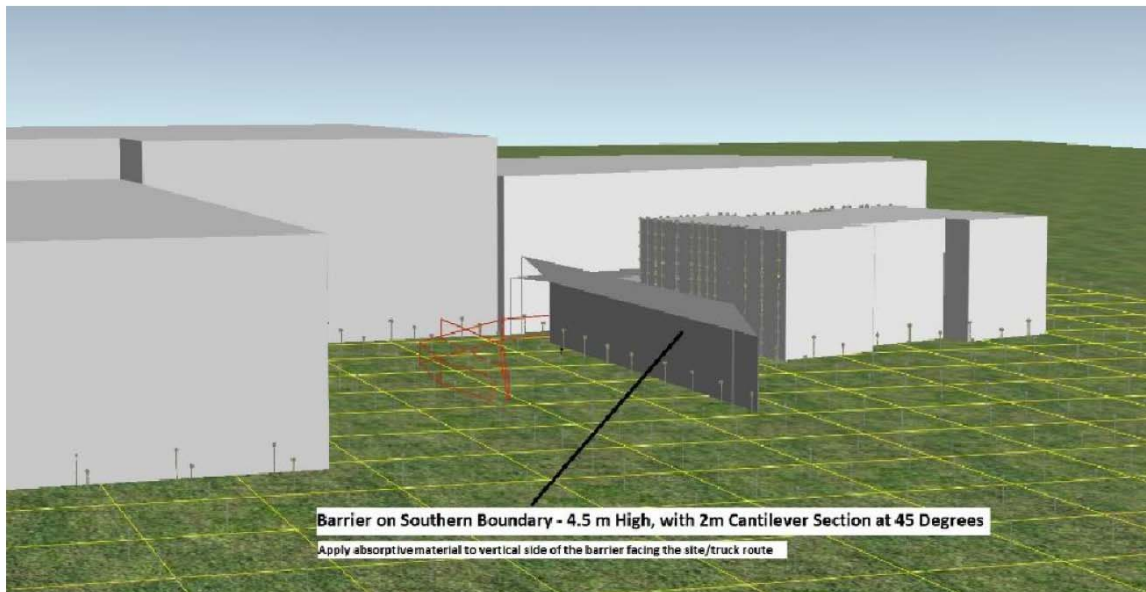


Figure 3 – Barrier on the Southern Boundary

2. Alternative Noise Mitigation Measures;

The large barriers stipulated above will result in prohibitive cost to the applicant, which total approximately \$574,005.10. Alternatively, the following mitigation is proposed by the applicant to control the noise impact at 10 Devitt Place.

- a) An offer to install air conditioning to all apartments at 10 Devitt Place to allow the windows to be closed for noise control purposes at any time with a total cost of \$35,000.00; and
- b) If the offer of air conditioning installation is not accepted, a 1.8 metre high Colorbond fence is to be constructed along the access lane, which will not be as effective in reducing noise impact as the air conditioning.

3. Revised Proposed Hours;

Condition No. 28 currently reads as the approved operating hours of the northern and southern loading dock are as follows.

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

Previously, the Section 96(2) Application to modify Development Consent No. 2001/537 sought 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.

The application now seeks the following hours for the southern loading dock.

- 7.00am to 8.00pm Monday to Saturday, and
- 8.00am to 8.00pm on Sunday and Public Holidays

The operating hours sought are now reduced by one (1) hour on Sunday and Public Holidays compared to that previously proposed under this application.

4. Management of the Southern Loading Dock;

The proposal now seeks to obtain extended trading hours as stated above exclusively to apply to Aldi Store delivery vehicles and not the rest of the other users of the southern loading dock.

The users of the southern loading dock, excluding Aldi, are as the following (refer to Figure 4).

- a) Red Dollar Store – up to four (4) deliveries per week between 10.00am and 2.00pm.
- b) Chemist Warehouse – subject to future Development Application. Three (3) deliveries per week between 9.00am and 5.00pm.
- c) Southpoint Apartments – loading dock adjoining to Aldi for rubbish collection on Fridays between 7.20am and 10.00am.

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 2 minutes for the vehicle to enter the dock);
- 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;
- The unloading process takes approximately one hour.

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 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 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 into the dock opening.

Sound proofing loading dock curtain will be installed within the loading dock entrance to minimise noise. Aldi will monitor delivery vehicle movements using a GPS tracking system.

The Southern Loading Dock Management Plan states the following to ensure adverse noise impacts are minimised.

- The use of the extended southern loading dock delivery hours are for the exclusive use of ALDI Stores only. The ALDI Loading Dock is clearly signposted. All other users of the Loading Dock will continue to operate under the existing Loading Dock operating hours;
- Southpoint Shopping Centre Security will continue to monitor the loading dock after delivery hours to ensure no deliveries are being made outside of the approved hours;
- Southpoint Shopping Centre Security will ensure no deliveries are being made within the extended delivery hours by other users of the Southern Loading Dock;

- The gate which separates the Southern Loading Dock will be locked at 8.00pm Monday to Saturday and at 8.00pm on Sunday by Southpoint Shopping Centre to ensure no deliveries are made after the approved extended hours.

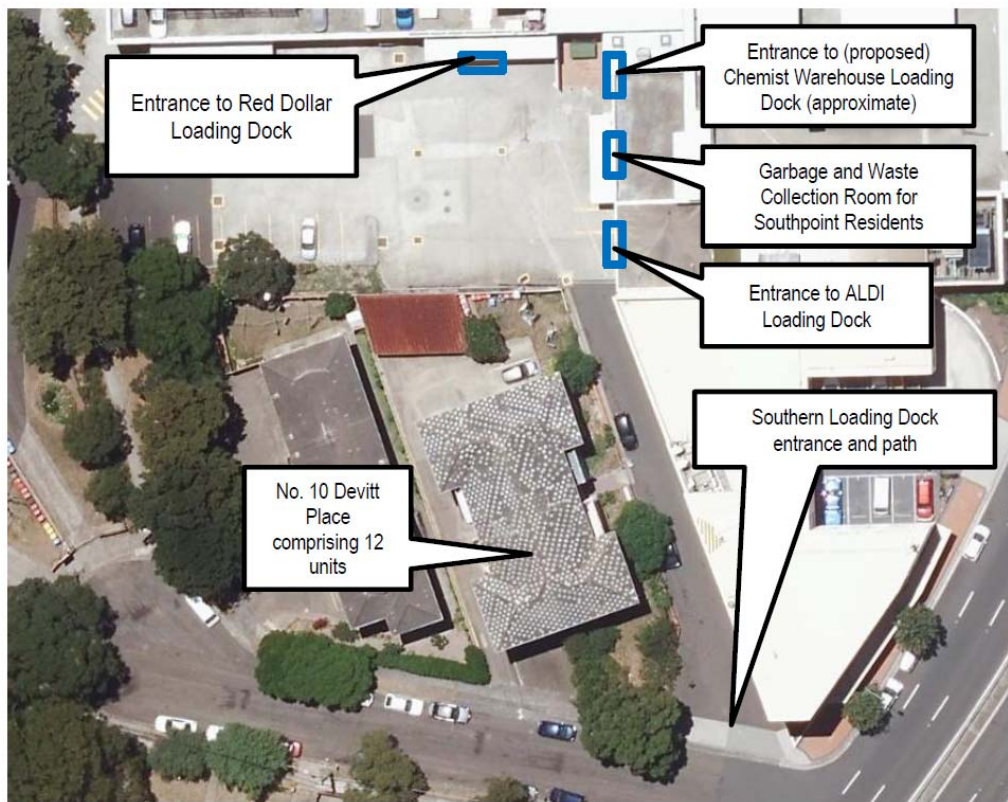


Figure 4 – Location of Southern Loading Dock Users



Photo 1: The ALDI Loading Dock (view east)

Clearly signposted as the ALDI Loading Dock



Photo 2: The Waste Collection Roller Door (view east)



Photo 3: The Red Dollar Loading Dock (view north)



Photo 4: Future Chemist Warehouse Loading Dock (Approximate location)

Issues Raised in the Submissions Received from Re-notification

Additional information received from the applicant on 27 October 2017 was re-notified to the objectors and the adjoining properties for 14 days from 3 November to 17 November 2017. Four (4) submissions were received, which are summarised below.

1. Two (2) submissions from residents at 10 Devitt Place.
 - a) Noise issues from the unauthorised use of loading dock outside the approved hours have severely impacted the wellbeing of residents with traditional working hours;
 - b) The offer of air conditioning installation will not allow residents to retreat in their home with the ability to open window to enjoy the breeze without the extra noise impact;
 - c) The on-going costs of running air conditioning compared to zero cost of opening a window;
 - d) The cost of air conditioning installation equates to potentially one (1) air conditioning per unit, which will not be able to serve all bedrooms for each dwelling;
 - e) The offer of 1.8 metre fence installation will not appropriately assist noise reduction and will be detrimental to property values, create amenity impact, be visually imposing and not comply with requirement to not exceed 5db(A);
 - f) Recommendation from the Strata Committee of 10 Devitt Place is as the following.
 - i. Aldi Stores replace all window frames and windows in 10 Devitt Place with aluminium frames and double glazed windows and all external doors with solid core doors to ensure sound protection.
 - ii. Aldi Stores install air conditioning in each room of each dwelling with cool and heat functionality.
 - iii. Aldi Stores to fund running of electricity of the air conditioning system.
 - iv. Revised Loading Dock times to Monday to Saturday 8.00am – 8.00pm; and Sunday 10.00am – 8.00pm.

Planner's Comments:

Refer to the assessment section below regarding impact from noise and 1.8 metre fence installation. In relation to the installation of air conditioning at 10 Devitt Place and its ongoing cost, if this was to be supported, this would require a separate application and owners consent from 10 Devitt Place. The proposed air conditioning installation is not substantially the same development for which the consent was originally granted under Development Consent No. 2001/537.

2. One (1) submission from a resident at 9 Devitt Place.
 - a) The offer of air conditioning installation has not been extended to 9 Devitt Place, which is located within equal distance to the loading dock;
 - b) Revised hours of operation will continue to impact sleep as the objector's bedroom is located at a distance less than 10 metres directly opposite the loading dock.

Planner's Comments:

Refer to the assessment section below regarding to noise impact. In relation to extending the installation of air conditioning at 9 Devitt Place, if this was to be supported, would require a separate application and owners consent from 9 Devitt Place.

3. One (1) submission on the behalf of the Owners Corporation at 238-262 Bunnerong Road.
 - a) The extension of operating hours at the southern loading dock should not set precedent for the operating hours of the northern loading dock, which would lead to unsatisfactory residential amenity impacts at 238-262 Bunnerong Road.
 - b) If the application is to be approved, the condition should clearly states that this in no way sets a precedent for the northern dock and conditions similar to the ones outlined below should be included.
 - i. All truck refrigeration should be switched off whilst in the loading bay.
 - ii. No delivery vehicle should be backed in or out of the access lane.
 - iii. Vehicles shall be fitted with devices to replace reversing alarms.

Planner's Comments:

The submission is noted. However, the proposed extension of operating hours and noise mitigation measures submitted are not supported at its current form. Implementing condition to restrict the use of the northern loading dock would not be required, unless if the proposed extension of operating hours is to be approved.

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 for extended trading hours for Aldi Store is substantially the same development as that to which was sought under the original development application. Proposed noise mitigation measure to install air conditioning units within the adjoining property at 10 Devitt Place, however, is not considered to be substantially the same development as that to which was sought under the original development application under Development Consent No. 2001/537 and would require a separate development application, if it was to be supported.

- 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 (BBDGP) 2013, amended information provided with the Section 96 application was notified and advertised for 14 days from 3 November to 17 November 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.***

Four (4) submissions were received and considered as discussed above.

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.***

Botany Bay Local Environmental Plan (BBLEP) 2013

The amended noise assessment report recommends the installation of mechanical ventilation at one of the adjoining residential properties at 10 Devitt Place and that the amended plan of management recommends the exclusive use of the southern loading dock for Aldi within the proposed extended operating hours. The revised measures proposed would not result in the mitigation of noise at its source, as the noise minimisation measures to comply with the noise criterion to satisfy the intent of the original development consent would result in prohibitive cost to the applicant. Nonetheless, the proposed noise mitigation measures are carried out in isolation without further consideration of the adjoining land uses, such as other residential use at 9 Devitt Place 238-262 Bunnerong Road, and the other users within the southern and the northern loading docks. The proposed installation a 1.8 metre high fence to the western boundary will not resolve the noise impact of the proposed development and will adversely impact the amenity of the residents at 10 Devitt Place, particularly the units at the ground floor.

The Panel recommended that the amended proposal should satisfy the aim of the Plan to create a highly liveable urban place. The proposed modification to extend the operating hours of the southern loading dock and amended noise mitigation measures do not satisfy the aim of the Plan and the objective of BBLEP 2013 in that it will not positively contribute in serving the needs of people who live in the local area. The amended proposal is therefore not supported at its current form.

Botany Bay Development Control Plan (BBDGP) 2013

The previous report addresses BBDGP 2013 provisions in relation to Part 5.3.2.8 – Interface between business zones and the adjoining land uses, Part 5.3.3.1 – Acoustic privacy, and Part 5.3.3.3 – Solar access and shadow.

The applicant has submitted a shadow diagram, which demonstrates that no additional overshadowing will result from the proposed installation of a 1.8 metre high fence. However, the construction of a 1.8 metre fence on the western boundary will not resolve the adverse noise impacts from the proposed extension of operating hours and will further impact the amenity of the residents at 10 Devitt Place, particularly the units at ground floor level.

No additional information has been provided in relation to noise criterion compliance for residential land use within the vicinity other than the noise analysis at 10 Devitt Place. Given the prohibitive cost to the applicant to minimise the noise impact at its source, the applicant has offered the installation of air conditioning unit in each of the dwellings at 10 Devitt Place, which fails to address the impact of business zones at their interface with the rest of the adjoining land uses and to conserve the overall amenity of neighbouring properties under Part 5.3.2.8. The operation of the premises will continue to 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 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. The proposed installation of an air conditioning unit in each of the dwellings at 10 Devitt Place may resolve noise impact of a room within each dwelling, but has not given consideration of the other bedrooms.

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

Environmental Planning and Assessment Regulation 2000

The proposed development does not satisfy Clause 115(1)(h) in which if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner). Owners' consent for the proposed installation of air conditioning units is yet to be provided to Council, subject to the outcome of this assessment.

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 3 November to 17 November 2017, four (4) objections were received. The issues raised in the submissions are discussed above.

Conclusion

The proposal fails to demonstrate a reduction in the noise impact to satisfy the Bayside Planning Panel recommendation in creating a highly-liveable urban place and the original development consent outcomes. The proposed extension of the southern loading dock of Aldi Store operating hours cannot be supported and the proposal is therefore recommended for REFUSAL.

Attachment

26 October 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 and write in response to the Planning Panel's determination on 10 October 2017. This application was considered by the Bayside Planning Panel on 10 October 2017 with the following determination (Agenda Item No. 5.1) *"That this application be deferred to allow the applicant to provide further details in regard to revised measures which reduce the noise impacts so as to reasonably satisfy the objective to create a highly-livable urban place and satisfy the original development consent outcomes."*

Further, this submission addresses an email from Council Officer Olivia Yana dated 13 October 2017, which requested the following information be provided to Council:

1. *"Modify proposed hours of loading dock as discussed in the meeting;*
2. *Amend the loading dock plan of management to reflect the proposed operation, including, but not limited to, the operation details of the other existing docks within the southern loading area and lighting required for the night activity;*
3. *Provide design details of noise attenuation measure, such as acoustic treatment on fencing within the subject site; and*
4. *Provide updated noise report with modified proposed hours, recommended noise attenuation measure and operation details of the other existing docks within the southern loading area. The noise report must satisfy the performance condition (Condition No. 26) of the original consent in relation to exceedance of noise criteria shall not be greater than 5db(A), particularly for the top floor units at No. 10 Devitt Place."*

Please find enclosed with this letter the following:

- ALDI Hillsdale Addendum Report Addendum prepared by Wilkinson Murray Pty Limited dated October 2017 (**Attachment A**).
- Southern Loading Dock Plan of Management (**Attachment B**).
- Acoustic Barrier Costing prepared by Donald Cant Watts Corke dated October 2017 (**Attachment C**).

Further Acoustic Assessment

Following the Planning Panel meeting, a Noise Assessment Report Addendum has been prepared by Wilkinson Murray dated 26 October 2017 (refer to **Attachment A**). The addendum recommends the following noise attenuation measure to control the impact of noise levels from the extended ALDI delivery timeframe which will result in reduced internal noise levels:

- Offer the installation of air-conditioning (at cost to ALDI Stores) for all twelve properties of 10 Devitt Place, so doors and windows can be closed during delivery times to maintain a comfortable internal temperature. This option would provide the most benefit to residents in relation to reducing the noise impacts of delivery trucks.

Installation of the air-conditioning within each dwelling will be contingent on approval of the hours of delivery proposed. It is understood that there are twelve property owners within No. 10 Devitt Place. Milestone and ALDI Stores will conduct consultation with residents regarding the installation of air-conditioning units. The total cost of installation of air-conditioning internally within each dwelling is approximately \$35,000.

In the event that the air-conditioning is not accepted, the installation of a 1.8m high fence on the western boundary of the delivery access entrance could be erected, however would not be as effective in managing noise impacts.

Cost of Proposed Noise Attenuation Measures

ALDI Stores has modelled the cost of installing a 4.5m acoustic barrier, in context of the acoustic analysis, on the western and southern boundary of the southern loading dock that would ensure compliance with the 49dBA criterion at all floors of the apartment building. The costing prepared for ALDI Stores is \$574,005.00 (refer to **Attachment C**). Due to the excessive cost involved with installing the acoustic barrier and the resultant significant amenity impacts, including visual imposition, visual bulk and overshadowing, it is unreasonable for ALDI Stores to commit to this recommendation.

Revised Proposed Hours

In light of the above, it is respectfully requested that the Planning Panel consider alternative options that would improve the existing amenity of the adjacent residents and No. 10 Devitt Place and provide ALDI Stores with the required flexibility for deliveries to the Hillsdale ALDI Store. Therefore, 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 exclusively for the ALDI Store to be as follows:

Condition 28 Hours of operation for both 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 Holiday	10.00am to 5.00pm

Notwithstanding the above, ALDI may use the Southern Loading Dock between 6.00pm and 8.00pm Monday to Saturday and 8.00am to 8.00pm Sunday and Public Holidays.

Loading Dock Plan of Management

A revised Loading Dock Plan of Management for the Southern Loading Dock has been prepared by Milestone (held in **Attachment B**). This outlines how the extended hours will be managed to ensure adverse noise impacts are minimised. The Southern Loading Dock Management Plan states:

- The use of the extended southern loading dock delivery hours are for the exclusive use of ALDI Stores only. The ALDI Loading Dock is clearly signposted. All other users of the Loading Dock will continue to operate under the existing Loading Dock operating hours.
- Southpoint Shopping Centre Security will continue to monitor the loading dock after delivery hours to ensure no deliveries are being made outside of the approved hours.
- Southpoint Shopping Centre Security will ensure no deliveries are being made within the extended delivery hours by other users of the Southern Loading Dock.
- The gate which separates the Southern Loading Dock will be locked at 8.00pm Monday to Saturday and at 8.00pm on Sunday by Southpoint Shopping Centre to ensure no deliveries are made after the approved extended hours.

Proposed Air Conditioning to Dwellings

There are 12 separate owners within the residential flat building located at No. 10 Devitt Place. Milestone and ALDI Stores will coordinate consultation with unit owners to arrange the installation of air-conditioning units for each dwelling at a cost to ALDI Stores.

Conclusion

In summary, we consider the further acoustic analysis outlined within the Noise Assessment Addendum prepared by Wilkinson Murray provides sufficient evidence and justification regarding the appropriateness of an extended delivery hours of between 7am to 8pm Monday to Saturday and 8am to 8pm Sunday and Public Holiday. Milestone recommends that the Planning Panel endorse this proposal which would include the installation of air-conditioning to all twelve units within No. 10 Devitt Place to ensure the neighbourhood amenity is improved for No. 10 Devitt Place units.

The proposed noise attenuation measure would ensure that the development can operate and be consistent with the objective within Condition No. 10 of development Consent 01/537, which states "*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.*"

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

ATTACHMENT A

**NOISE ASSESSMENT REPORT ADDENDUM PREPARED BY WILKINSON MURRAY PTY
LIMITED DATED OCTOBER 2017**

ALDI HILLSDALE ADDENDUM REPORT

NOISE ASSESSMENT OF EXTENDED DELIVERY HOURS

REPORT NO. 99204-H2-A
VERSION A

OCTOBER 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	26 October 2017	Barry Murray	Sean Flaherty

Note

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Quality
ISO 9001

SAI GLOBAL

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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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3 CONCLUSION	3

1 INTRODUCTION

Wilkinson Murray Report No. 99204-H2 addressed the noise impact of extending the hours of ALDI delivery to the Southpoint Shopping Centre at 238-262 Bunnerong Road, Hillsdale. This Addendum Report provides further information in regard to the noise impact of the extended hours.

The currently approved hours for delivery to the southern loading dock are as follows:

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

ALDI seeks an extension to the approved delivery hours to allow for deliveries to occur during the following hours:

- Monday to Saturday 7.00am-8.00pm
- Sunday & Public Holidays 8.00am-8.00pm

The hours now sought for Sunday and Public Holidays are slightly reduced in comparison to the original s96 Application.

This report particularly addresses the noise impact associated with the extended hours in accordance with the Application, as follows:

- Monday to Saturday 6.00pm-8.00pm
- Sunday & Public Holidays 8.00am-10.00am / 5.00pm-8.00pm

2 NOISE ASSESSMENT & NOISE MITIGATION

As indicated in the original report (Report No. 99204-H2) the noise criterion for the extended hours has been set at $L_{Aeq,15min}$ 49dBA, particularly applying to the apartments at 10 Devitt Place.

The $L_{Aeq,15min}$ noise levels predicted from one ALDI truck entering and reversing into the dock or leaving the dock, turning and departing was predicted as 63dBA at the Devitt Place apartments. The predicted level is 14dB above the 49dBA noise criterion.

In the original report, it is recommended that the 1.8 metre high Colourbond fence between the apartments and the dock be extended around the corner and along the full length of the boundary adjacent to the access lane. Whilst the Colorbond fence would reduce noise levels at the ground floor of the apartment building, the first and second floors would not be affected by the fence leaving the delivery noise levels over the noise criterion.

Subsequently, further analysis has been carried out to ascertain the acoustic barriers that would be required to ensure compliance with the 49dBA criterion at all floors of the apartment building.

It is concluded that the following would be required:

- A 4.5 metre high barrier near the boundary along the length of the access lane with a 5 metre horizontal section (roof) partly over the lane. The 5 metre horizontal section could be supported on a structure which would extend across the lane and may be fixed to the existing shopping centre building; and
- A 4.5 metre high noise barrier on the boundary between the dock and the apartments with a 2 metre cantilevered section extending out over the dock turning area at 45 degrees.

The position and description of the required barriers are shown in Figure 2-1, Figure 2-2 and Figure 2-3.

Figure 2-1 Noise Barriers required for compliance of delivery noise with noise criterion

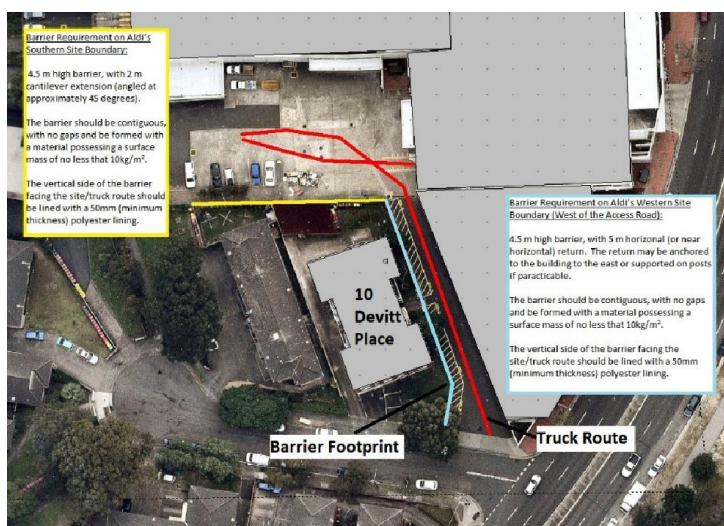


Figure 2-2 Perspective of access lane noise barrier

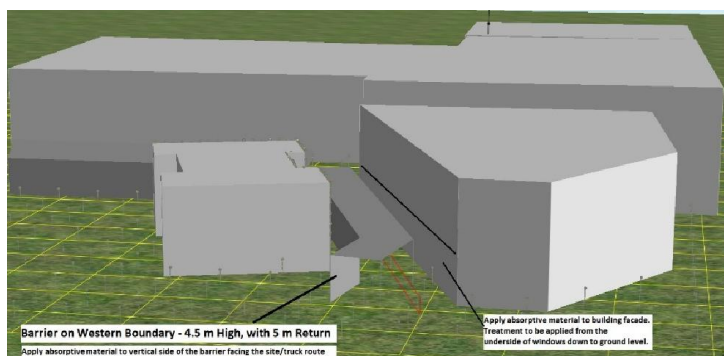
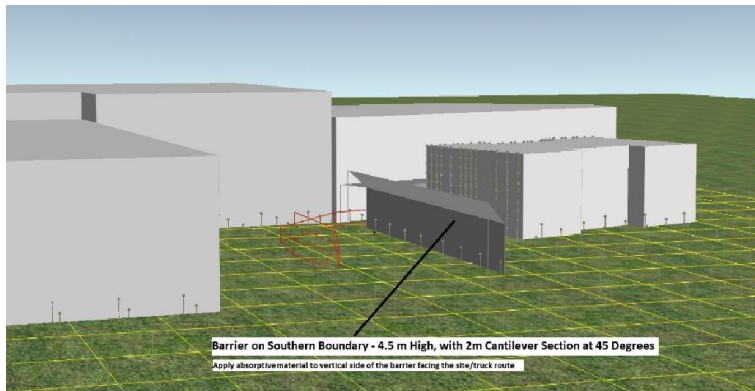


Figure 2-3 Perspective of dock noise barrier



The large barriers required would require substantial footings and structure with the vertical section likely constructed of concrete panel or masonry and the roof section or cantilevered section likely constructed of steel sheet.

Analysis has revealed that the required noise barriers are prohibitive in cost and they represent a major visual impact in the area. Decision has been made not to implement the required barriers.

As an alternative, the following mitigation is now proposed to control the noise impact at 10 Devitt Place.

- No extension of the 1.8 metre high Colorbond fence along the access lane; and
- An offer to provide air-conditioning to all apartments at 10 Devitt Place to allow the windows to be closed for noise control purposes at any time.

The offer of air-conditioning is contingent upon approval of the extension of hours being sought.

If the offer of air-conditioning is not accepted, the 1.8 metre high Colorbond fence along the access lane could be constructed. However, this fence will not be as effective in reducing the noise impact as the air-conditioning.

3 CONCLUSION

In order to control the impact of noise levels from ALDI deliveries during the proposed extended hours, it is proposed to offer air-conditioning for the apartments at 10 Devitt Place to allow windows to be closed for noise control purposes. This form of mitigation will result in reduced internal noise levels, including during the currently approved delivery hours.

If the offer of air-conditioning is not accepted, a 1.8 metre high Colorbond fence could be constructed along the access lane.

ATTACHMENT B

**SOUTHERN LOADING DOCK PLAN OF MANAGEMENT PREPARED BY MILESTONE DATED
OCTOBER 2017**

OCTOBER 2017

1.0 USERS OF THE SOUTHERN LOADING DOCK

The uses of the southern loading dock include:

- **ALDI Stores**
Up to three deliveries (17.6m length truck for groceries and household goods) and one rigid vehicle delivery (for bread) each day between 7am and 8pm Monday to Saturday and 8am and 8pm Sunday and Public Holidays.
- **Red Dollar Store**
Up to four deliveries per week between 10.00am and 2.00pm.
- **Chemist Warehouse** (Future Development Application)
One 4 tonne van daily, and two truck deliveries per week between 9.00am and 5.00pm. We understand that a Development Application will be lodged to Council for approval to construct an additional delivery dock, with a view to commence deliveries in early 2018.
- **Southpoint Apartments**
The waste collection room is located next to the existing ALDI loading dock. Rubbish collection occurs typically on Fridays between 7.20am and 10.00am.



Photo 1: The ALDI Loading Dock (view east)

Clearly
signposted as
the ALDI
Loading Dock



Photo 2: The Waste Collection Roller Door (view east)



Photo 3: The Red Dollar Loading Dock (view north)



Photo 4: Future Chemist Warehouse Loading Dock (Approximate location)

2.0 BACKGROUND

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 Addendum prepared by Wilkinson Murray Pty Limited (Wilkinson Murray) dated October 2017.

3.0 OPERATIONAL DETAILS

3.1 Delivery Hours

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

"28 *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 8.00pm</i>
<i>Saturday</i>	<i>7.00am to 6.00pm</i>
<i>Sunday and Public Holiday</i>	<i>10.00am to 5.00pm"</i>

This Section 96(2) Modification Application seeks to amend Condition No. 28 of Notice of Determination 01/537 to extend the delivery schedule to allow deliveries from 7.00am to 8.00pm Monday to Saturday and 8.00am to 8.00pm on Sunday and Public Holidays for the southern loading dock to be used exclusively by the ALDI Store, as follows:

Monday to Friday	7.00am to 8.00pm
Saturday	7.00am to 8.00pm
Sunday and Public Holiday	8.00am to 8.00pm

The extended hours of delivery will be for the exclusive use of ALDI delivery vehicles only. The ALDI Loading Dock is signposted clearly. All other users will operate deliveries as per existing hours within the Southern Loading Dock.

3.2 Location and Delivery Vehicle Access

The ALDI loading dock bay is located at the southern end of the southern loading dock 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.

Delivery trucks for Red Dollar and Waste Collection vehicles currently access the site from Devitt Place also.

3.3 Number and Type of Deliveries per day for the ALDI Store

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 ALDI deliveries to the southern loading dock between 7.00am and 8.00pm Monday to Saturday and 8.00am to 8.00pm on Sunday and Public Holidays.

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.

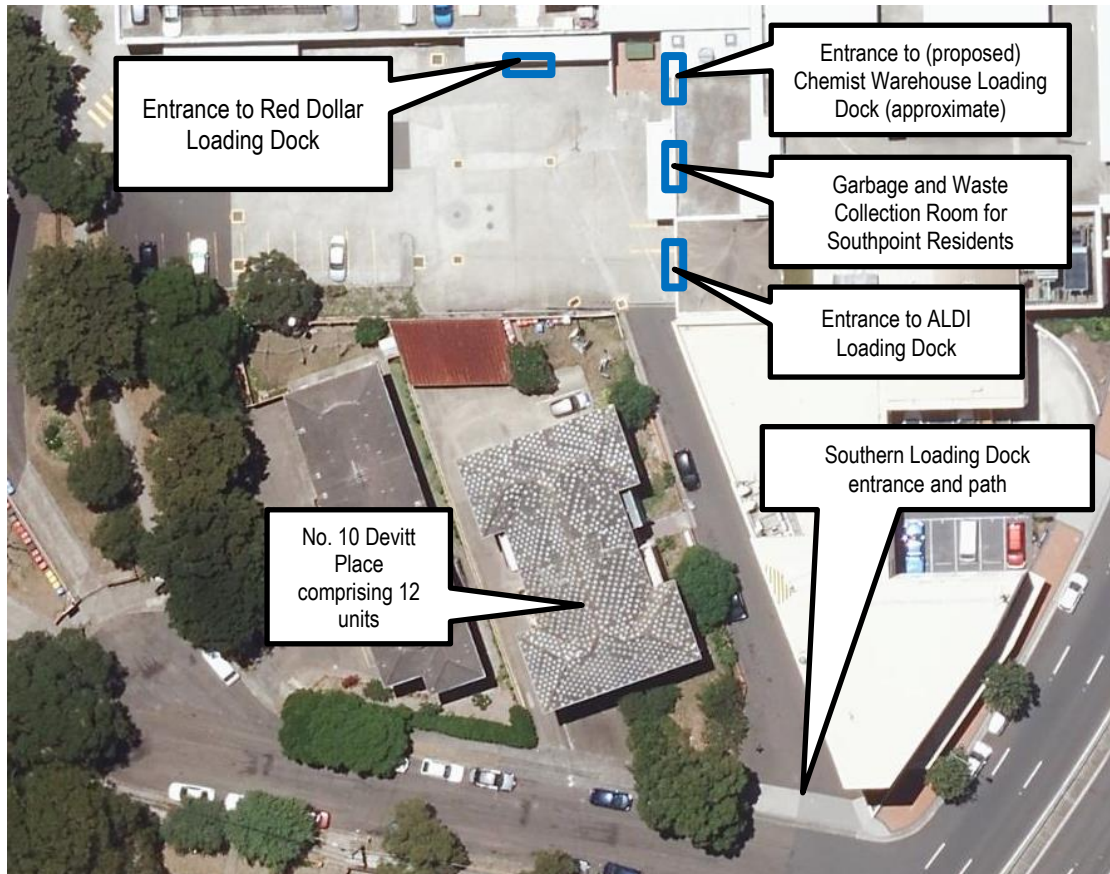


Figure 1: Southern Loading Dock
Source: Milestone

3.4 Delivery Procedure for the ALDI Store

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 2 minutes for the vehicle to enter the dock).
- 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.
- The unloading process takes approximately one hour.

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 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 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 into the dock opening.



Photo 5: ALDI Loading Dock (with sound proofing loading dock curtain)

3.5 Management of ALDI Delivery Vehicles and ALDI Loading Dock

The ALDI Store is a key retail tenant of the Southpoint Shopping Centre. 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.

Southpoint Shopping Centre Security will monitor the loading dock after delivery hours to ensure no deliveries are being made outside of the approved hours.

Southpoint Shopping Centre Security will ensure no deliveries are being made within the extended delivery hours by other users of the Southern Loading Dock.

The gate which separates the Southern Loading Dock will be locked at 8.00pm Monday to Saturday and at 6.00pm on Sunday by Southpoint Shopping Centre to ensure no deliveries are made after the approved extended hours.

3.6 Air Conditioning to dwellings in No. 10 Devitt Place

There are 12 separate owners within No. 10 Devitt Place. Milestone and ALDI Stores will coordinate consultation with unit owners to arrange the installation of air-conditioning units for each dwelling at the cost to ALDI Stores.

MILESTONE (AUST) PTY LIMITED

ATTACHMENT C

**ACOUSTIC BARRIER COSTING PREPARED BY DONALD CANT WATTS CORKE DATED
OCTOBER 2017**

ACOUSTIC BARRIERS
BAYSIDE PLANNING PANEL

SUMMARY OF COSTS - 23 OCTOBER 2017

TOTAL COST OF WESTERN BARRIER AND ROOF	\$ 264,491.10
TOTAL COST OF SOUTHERN BARRIER AND ROOF	\$ 215,208.40
TOTAL COST OF BUILDING FAÇADE	\$ 94,305.60
COST OF ALL ACOUSTIC TREATMENT	<u>\$ 574,005.10</u>

A ALDI Western Barrier

Total

Wall (4.5m High)	216	m2		
Concrete footings - Assume every 5 metres for columns	11	No	\$ 1,250.00	\$ 13,750.00
Primary Steel - Assume 30kg/m	1,485	kg	\$ 7.00	\$ 10,395.00
Bracing - Assume 5kg/m2	1,080	kg	\$ 7.00	\$ 7,560.00
Wall footing	48	m	\$ 300.00	\$ 14,400.00
Hebel wall lining	216	m2	\$ 140.00	\$ 30,240.00
50mm Polyester lining	216	m2	\$ 30.00	\$ 6,480.00
Peforated metal sheeting	216	m2	\$ 225.00	\$ 48,600.00
Roof (5m Wide)	240	m2		
Concrete footings - Assume every 5 metres to support roof overhang columns	11	No	\$ 1,250.00	\$ 13,750.00
Primary Steel - Assume 30kg/m	1,485	kg	\$ 7.00	\$ 10,395.00
Purlins - Assume 20kg/m2	4,800	kg	\$ 7.00	\$ 33,600.00
Roof sheeting	240	m2	\$ 60.00	\$ 14,400.00
Rainwater gutter and downpipes	71	m2	\$ 150.00	\$ 10,575.00
Lighting	1	Item		\$ 10,000.00
				\$ 224,145.00
Builders prelims and margin (18%)				\$ 40,346.10

TOTAL COST OF WESTERN BARRIER AND ROOF **\$ 264,491.10**

B ALDI Southern Barrier

Wall (4.5m High)	194	m2		
Concrete footings - Assume every 5 metres for columns	10	No	\$ 1,250.00	\$ 12,500.00
Primary Steel - Assume 30kg/m	1,350	kg	\$ 7.00	\$ 9,450.00
Bracing - Assume 5kg/m2	968	kg	\$ 7.00	\$ 6,772.50
Wall footing	43	m	\$ 300.00	\$ 12,900.00
Hebel wall lining	194	m2	\$ 140.00	\$ 27,090.00
50mm Polyester lining	194	m2	\$ 30.00	\$ 5,805.00
Peforated metal sheeting	194	m2	\$ 225.00	\$ 43,537.50
Roof (2m Wide)	108	m2		
Concrete footings - Assume every 5 metres to support roof overhang columns	10	No	\$ 1,250.00	\$ 12,500.00
Primary Steel - Assume 30kg/m	1,500	kg	\$ 7.00	\$ 10,500.00
Purlins - Assume 20kg/m2	2,150	kg	\$ 7.00	\$ 15,050.00
Roof sheeting	108	m2	\$ 60.00	\$ 6,450.00
Rainwater gutter and downpipes	66	m2	\$ 150.00	\$ 9,825.00
Lighting	1	Item		\$ 10,000.00
				\$ 182,380.00
Builders prelims and margin (18%)				\$ 32,828.40

C TOTAL COST OF SOUTHERN BARRIER AND ROOF **\$ 215,208.40**

Building Façade to East

Wall (4.5m High)	216	m2		
Furring channels to wall	216	m2	\$ 45.00	\$ 9,720.00
FC sheeting to wall	216	m2	\$ 70.00	\$ 15,120.00
50mm Polyester lining	216	m2	\$ 30.00	\$ 6,480.00
Peforated metal sheeting	216	m2	\$ 225.00	\$ 48,600.00
				\$ 79,920.00
Builders prelims and margin (18%)				\$ 14,385.60

TOTAL COST OF BUILDING FAÇADE **\$ 94,305.60**

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 Saturday, and 8.00am to 8.00pm on Sunday and Public Holidays; and to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store.
Recommendation:	Refused
No. of submissions:	Thirteen (13) submissions – first round of notification (2 June to 16 June 2017) Four (4) submissions – second round of notification (3 November to 17 November 2017)
Author:	Olivia Yana, Acting Senior Development Assessment Planner
Date of Report:	21 November 2017

Key Issues

On 10 October 2017, the subject Section 96 Application was referred to the Bayside Planning Panel (BPP) for its determination.

The Panel resolved as follows:

That this application be deferred to allow the applicant to provide further details in regard to revised measures which reduce the noise impacts so as to reasonably satisfy the objective to create a highly-liveable urban place and satisfy the original development consent outcomes.

Additional information to the Section 96(2) Application to modify Development Consent No. 2001/537 was received on 27 October 2017, which now seeks to amend Condition No. 28 to permit the following hours for the southern loading dock: 7.00am to 8.00pm Monday to Saturday, and 8.00am to 8.00pm on Sunday and Public Holidays; to amend Condition No. 27 to refer to an amended loading dock plan of management for the Aldi Store; and to install an air conditioning unit to each of the twelve property owners at No. 10 Devitt Place. In the event that the offer for air conditioning unit installation is not accepted, a 1.8 metre high fence is to be erected on the western boundary.

Previously, the Section 96(2) Application to modify Development Consent No. 2001/537 sought 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.

This Supplementary Report provides a response to the amended information provided by the applicant to address the outstanding matters raised by the Panel as well as the issues identified in the submissions received as part of the re-notification process.

The revised measures proposed would not result in the attenuation of noise at its source. Nonetheless, it is seeking to install air conditioning units at the adjoining property 10 Devitt Place and to allow the use of the southern loading dock exclusively for the Aldi Store. These proposed noise mitigation measures are carried out in isolation without consideration of further amenity impacts from the installation of mechanical ventilation and the adjoining existing land uses.

The proposal fails to demonstrate a reduction in the noise impact to satisfy the Panel recommendation in creating a highly-liveable urban place and the original development consent outcomes.

The proposed extension of the Aldi Store's southern loading dock operating hours cannot be supported and the proposal is therefore recommended for REFUSAL.

Recommendation

- 1 That Section 96(2) Application 2001/537/16 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 Saturday, and 8.00am to 8.00pm on Sunday and 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:
 - a. 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.
 - b. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal does not meet the objective 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.
 - c. 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:
 - i. Part 5.3.2.8 – Interface between Business Zones and Adjoining Landuses; and

- ii. Part 5.3.3.1 – Acoustic Privacy.
 - d. 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.
 - e. 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.
 - f. Pursuant to Section 96(2)(a) of the Environmental Planning and Assessment Act 1979, the proposed installation of air conditioning units at the adjoining property 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.
 - g. 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.
 - h. The proposal fails to satisfy the provision of Section 115(1)(h) of the Environmental Planning and Assessment Regulation 2000, as owners’ consent is yet to be provided for the proposed works to install air conditioning units to the adjoining property.
- 2 That the objectors be advised of the Bayside Planning Panel’s decision.

Assessment of Applicant’s Response

The Panel deferred the subject application to allow the applicant to provide further details in regard to revised measures to reduce the noise impacts so as to reasonably satisfy the objective to create a highly-liveable urban place and satisfy the original development consent outcomes.

The applicant has provided the following response.

1. The Outcome of Noise Assessment Report;

The report particularly addresses the noise impact associated with extended hours as follows.

- a) Monday – Saturday 6.00pm – 8.00pm
- b) Sunday and Public Holidays 8.00am – 10.00am and 5.00pm – 8.00pm

The installation of 1.8 metre high Colorbond fence will reduce the noise level at the ground floor of the apartment building, however not the first and second floor levels.

To ensure compliance with the 49dBA criterion at all floors of the apartment building, it would require the following measures (refer to Figure 1).

- a) A 4.5 metre barrier near the boundary along the length of the access lane with a 5 metre horizontal section (roof) partly over the lane. The 5 metre horizontal section could be supported on a structure which could extend across the lane and may be fixed to the existing shopping centre building (refer to Figure 2); and
- b) A 4.5 metre noise barrier on the boundary between the dock and the apartments with a 2 metre cantilevered section extending out over the dock turning area at 45 degrees (refer to Figure 3).

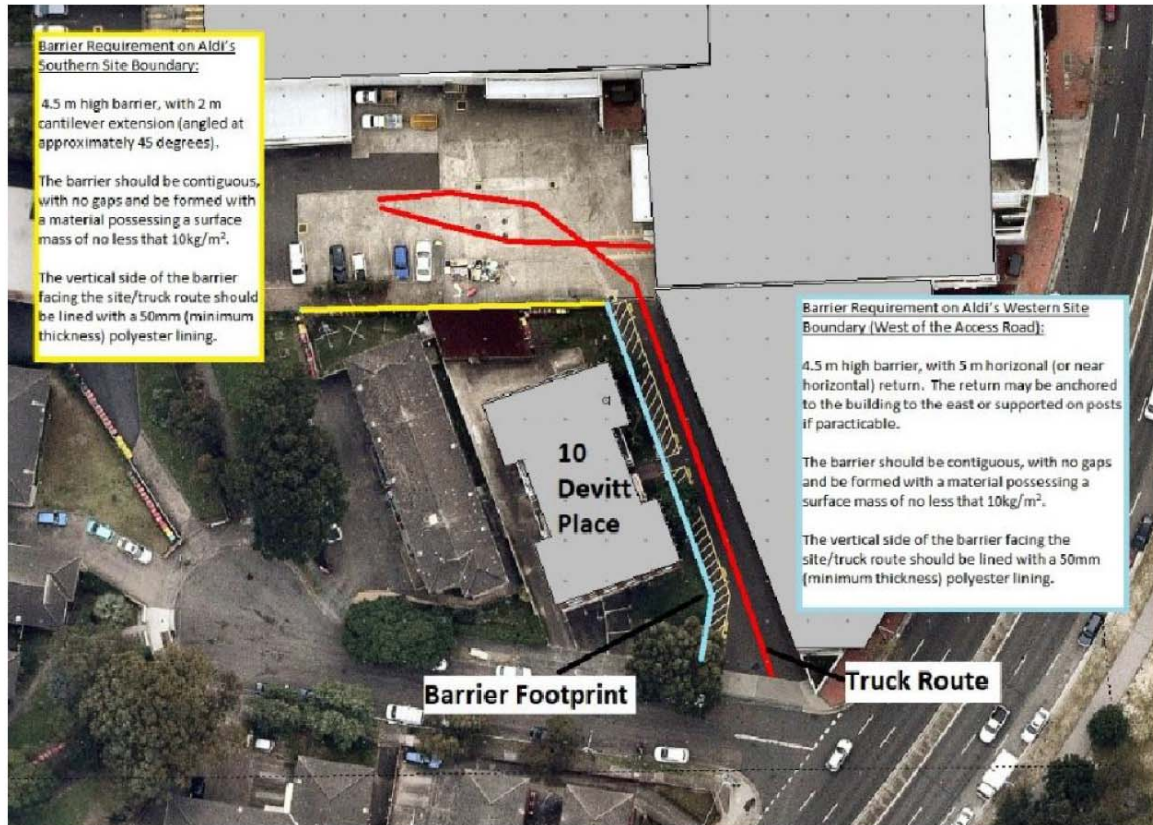


Figure 1 – Site Plan

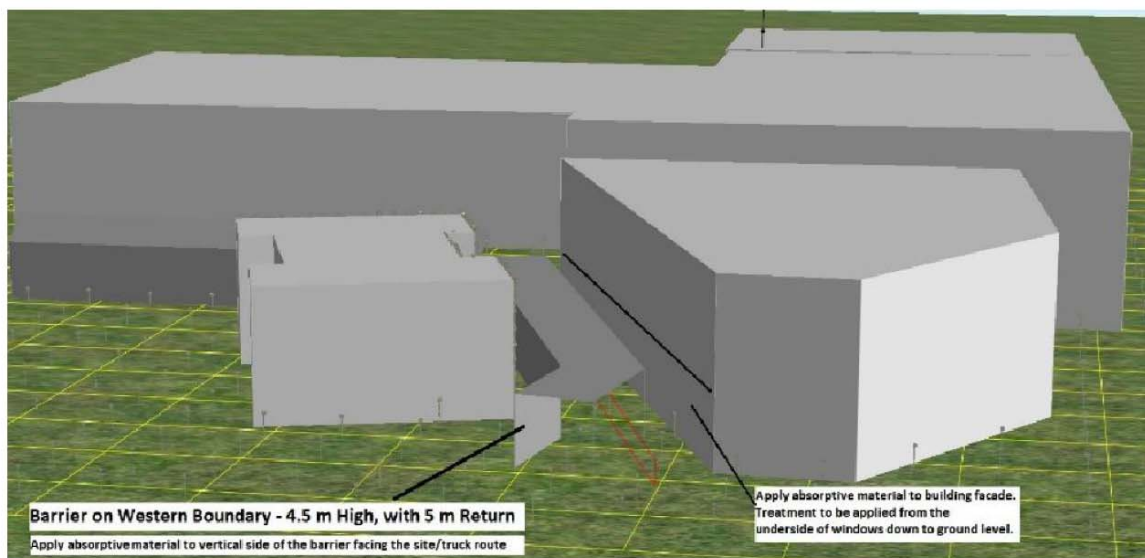


Figure 2 – Barrier on the Western Boundary

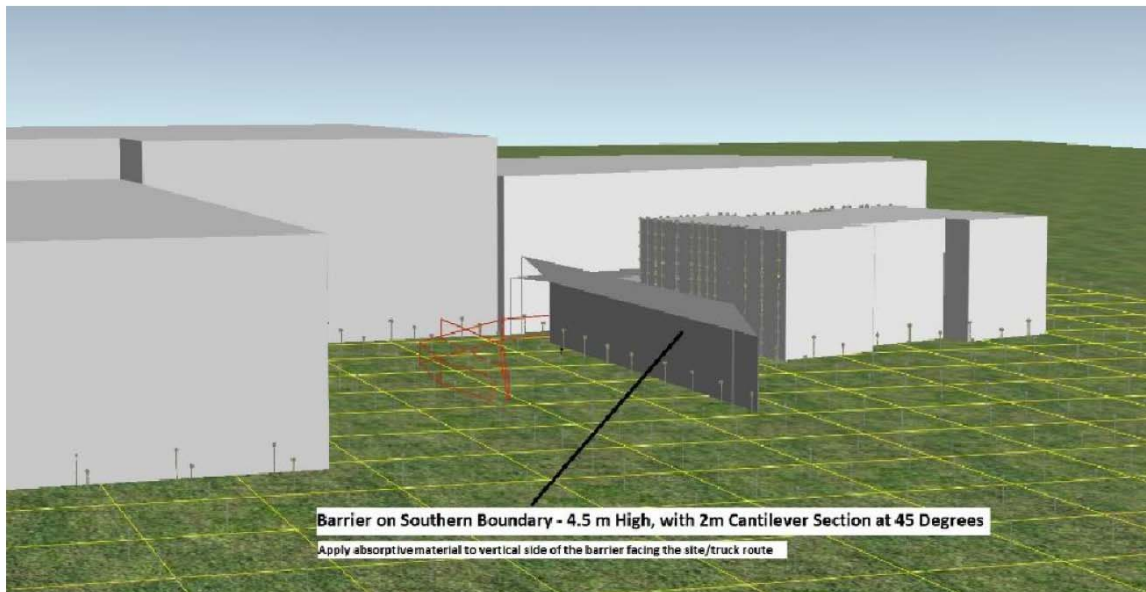


Figure 3 – Barrier on the Southern Boundary

2. Alternative Noise Mitigation Measures;

The large barriers stipulated above will result in prohibitive cost to the applicant, which total approximately \$574,005.10. Alternatively, the following mitigation is proposed by the applicant to control the noise impact at 10 Devitt Place.

- a) An offer to install air conditioning to all apartments at 10 Devitt Place to allow the windows to be closed for noise control purposes at any time with a total cost of \$35,000.00; and
- b) If the offer of air conditioning installation is not accepted, a 1.8 metre high Colorbond fence is to be constructed along the access lane, which will not be as effective in reducing noise impact as the air conditioning.

3. Revised Proposed Hours;

Condition No. 28 currently reads as the approved operating hours of the northern and southern loading dock are as follows.

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

Previously, the Section 96(2) Application to modify Development Consent No. 2001/537 sought 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.

The application now seeks the following hours for the southern loading dock.

- 7.00am to 8.00pm Monday to Saturday, and
- 8.00am to 8.00pm on Sunday and Public Holidays

The operating hours sought are now reduced by one (1) hour on Sunday and Public Holidays compared to that previously proposed under this application.

4. Management of the Southern Loading Dock;

The proposal now seeks to obtain extended trading hours as stated above exclusively to apply to Aldi Store delivery vehicles and not the rest of the other users of the southern loading dock.

The users of the southern loading dock, excluding Aldi, are as the following (refer to Figure 4).

- a) Red Dollar Store – up to four (4) deliveries per week between 10.00am and 2.00pm.
- b) Chemist Warehouse – subject to future Development Application. Three (3) deliveries per week between 9.00am and 5.00pm.
- c) Southpoint Apartments – loading dock adjoining to Aldi for rubbish collection on Fridays between 7.20am and 10.00am.

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 2 minutes for the vehicle to enter the dock);
- 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;
- The unloading process takes approximately one hour.

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 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 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 into the dock opening.

Sound proofing loading dock curtain will be installed within the loading dock entrance to minimise noise. Aldi will monitor delivery vehicle movements using a GPS tracking system.

The Southern Loading Dock Management Plan states the following to ensure adverse noise impacts are minimised.

- The use of the extended southern loading dock delivery hours are for the exclusive use of ALDI Stores only. The ALDI Loading Dock is clearly signposted. All other users of the Loading Dock will continue to operate under the existing Loading Dock operating hours;
- Southpoint Shopping Centre Security will continue to monitor the loading dock after delivery hours to ensure no deliveries are being made outside of the approved hours;
- Southpoint Shopping Centre Security will ensure no deliveries are being made within the extended delivery hours by other users of the Southern Loading Dock;

- The gate which separates the Southern Loading Dock will be locked at 8.00pm Monday to Saturday and at 8.00pm on Sunday by Southpoint Shopping Centre to ensure no deliveries are made after the approved extended hours.

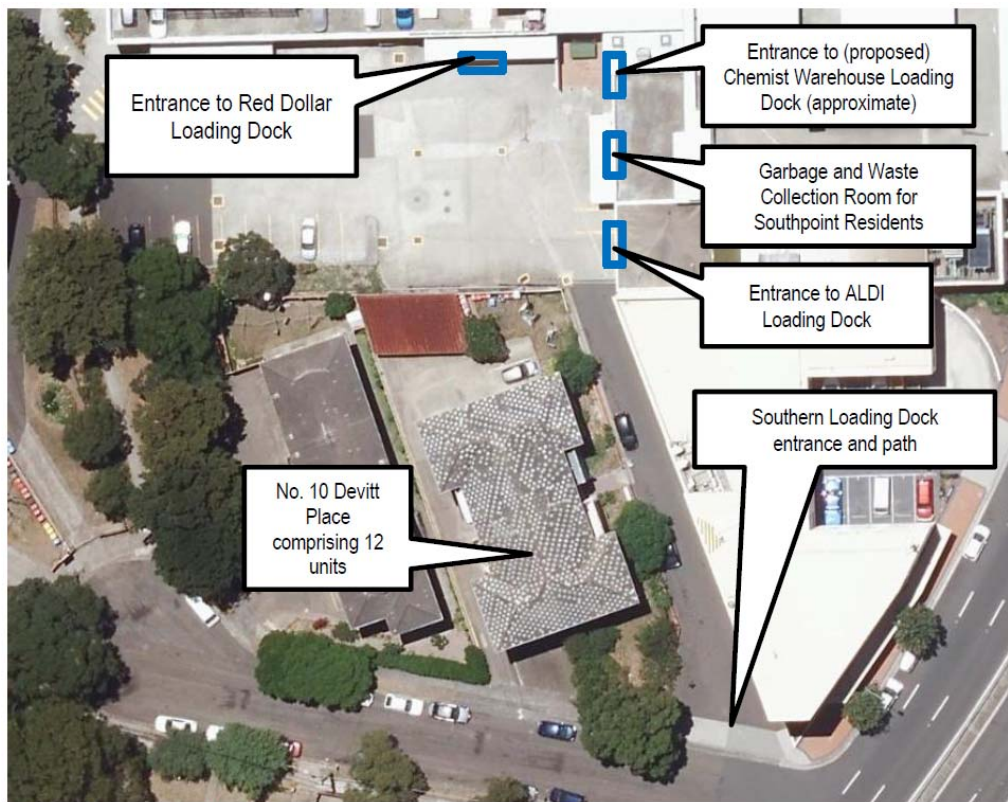


Figure 4 – Location of Southern Loading Dock Users



Photo 1: The ALDI Loading Dock (view east)



Photo 2: The Waste Collection Roller Door (view east)



Photo 3: The Red Dollar Loading Dock (view north)



Photo 4: Future Chemist Warehouse Loading Dock (Approximate location)

Issues Raised in the Submissions Received from Re-notification

Additional information received from the applicant on 27 October 2017 was re-notified to the objectors and the adjoining properties for 14 days from 3 November to 17 November 2017. Four (4) submissions were received, which are summarised below.

1. Two (2) submissions from residents at 10 Devitt Place.
 - a) Noise issues from the unauthorised use of loading dock outside the approved hours have severely impacted the wellbeing of residents with traditional working hours;
 - b) The offer of air conditioning installation will not allow residents to retreat in their home with the ability to open window to enjoy the breeze without the extra noise impact;
 - c) The on-going costs of running air conditioning compared to zero cost of opening a window;
 - d) The cost of air conditioning installation equates to potentially one (1) air conditioning per unit, which will not be able to serve all bedrooms for each dwelling;
 - e) The offer of 1.8 metre fence installation will not appropriately assist noise reduction and will be detrimental to property values, create amenity impact, be visually imposing and not comply with requirement to not exceed 5db(A);
 - f) Recommendation from the Strata Committee of 10 Devitt Place is as the following.
 - i. Aldi Stores replace all window frames and windows in 10 Devitt Place with aluminium frames and double glazed windows and all external doors with solid core doors to ensure sound protection.
 - ii. Aldi Stores install air conditioning in each room of each dwelling with cool and heat functionality.
 - iii. Aldi Stores to fund running of electricity of the air conditioning system.
 - iv. Revised Loading Dock times to Monday to Saturday 8.00am – 8.00pm; and Sunday 10.00am – 8.00pm.

Planner's Comments:

Refer to the assessment section below regarding impact from noise and 1.8 metre fence installation. In relation to the installation of air conditioning at 10 Devitt Place and its ongoing cost, if this was to be supported, this would require a separate application and owners consent from 10 Devitt Place. The proposed air conditioning installation is not substantially the same development for which the consent was originally granted under Development Consent No. 2001/537.

2. One (1) submission from a resident at 9 Devitt Place.
 - a) The offer of air conditioning installation has not been extended to 9 Devitt Place, which is located within equal distance to the loading dock;
 - b) Revised hours of operation will continue to impact sleep as the objector's bedroom is located at a distance less than 10 metres directly opposite the loading dock.

Planner's Comments:

Refer to the assessment section below regarding to noise impact. In relation to extending the installation of air conditioning at 9 Devitt Place, if this was to be supported, would require a separate application and owners consent from 9 Devitt Place.

3. One (1) submission on the behalf of the Owners Corporation at 238-262 Bunnerong Road.
 - a) The extension of operating hours at the southern loading dock should not set precedent for the operating hours of the northern loading dock, which would lead to unsatisfactory residential amenity impacts at 238-262 Bunnerong Road.
 - b) If the application is to be approved, the condition should clearly states that this in no way sets a precedent for the northern dock and conditions similar to the ones outlined below should be included.
 - i. All truck refrigeration should be switched off whilst in the loading bay.
 - ii. No delivery vehicle should be backed in or out of the access lane.
 - iii. Vehicles shall be fitted with devices to replace reversing alarms.

Planner's Comments:

The submission is noted. However, the proposed extension of operating hours and noise mitigation measures submitted are not supported at its current form. Implementing condition to restrict the use of the northern loading dock would not be required, unless if the proposed extension of operating hours is to be approved.

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 for extended trading hours for Aldi Store is substantially the same development as that to which was sought under the original development application. Proposed noise mitigation measure to install air conditioning units within the adjoining property at 10 Devitt Place, however, is not considered to be substantially the same development as that to which was sought under the original development application under Development Consent No. 2001/537 and would require a separate development application, if it was to be supported.

- 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, amended information provided with the Section 96 application was notified and advertised for 14 days from 3 November to 17 November 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.***

Four (4) submissions were received and considered as discussed above.

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.***

Botany Bay Local Environmental Plan (BBLEP) 2013

The amended noise assessment report recommends the installation of mechanical ventilation at one of the adjoining residential properties at 10 Devitt Place and that the amended plan of management recommends the exclusive use of the southern loading dock for Aldi within the proposed extended operating hours. The revised measures proposed would not result in the mitigation of noise at its source, as the noise minimisation measures to comply with the noise criterion to satisfy the intent of the original development consent would result in prohibitive cost to the applicant. Nonetheless, the proposed noise mitigation measures are carried out in isolation without further consideration of the adjoining land uses, such as other residential use at 9 Devitt Place 238-262 Bunnerong Road, and the other users within the southern and the northern loading docks. The proposed installation a 1.8 metre high fence to the western boundary will not resolve the noise impact of the proposed development and will adversely impact the amenity of the residents at 10 Devitt Place, particularly the units at the ground floor.

The Panel recommended that the amended proposal should satisfy the aim of the Plan to create a highly liveable urban place. The proposed modification to extend the operating hours of the southern loading dock and amended noise mitigation measures do not satisfy the aim of the Plan and the objective of BBLEP 2013 in that it will not positively contribute in serving the needs of people who live in the local area. The amended proposal is therefore not supported at its current form.

Botany Bay Development Control Plan (BBDCP) 2013

The previous report addresses BBDCP 2013 provisions in relation to Part 5.3.2.8 – Interface between business zones and the adjoining land uses, Part 5.3.3.1 – Acoustic privacy, and Part 5.3.3.3 – Solar access and shadow.

The applicant has submitted a shadow diagram, which demonstrates that no additional overshadowing will result from the proposed installation of a 1.8 metre high fence. However, the construction of a 1.8 metre fence on the western boundary will not resolve the adverse noise impacts from the proposed extension of operating hours and will further impact the amenity of the residents at 10 Devitt Place, particularly the units at ground floor level.

No additional information has been provided in relation to noise criterion compliance for residential land use within the vicinity other than the noise analysis at 10 Devitt Place. Given the prohibitive cost to the applicant to minimise the noise impact at its source, the applicant has offered the installation of air conditioning unit in each of the dwellings at 10 Devitt Place, which fails to address the impact of business zones at their interface with the rest of the adjoining land uses and to conserve the overall amenity of neighbouring properties under Part 5.3.2.8. The operation of the premises will continue to 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 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. The proposed installation of an air conditioning unit in each of the dwellings at 10 Devitt Place may resolve noise impact of a room within each dwelling, but has not given consideration of the other bedrooms.

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

Environmental Planning and Assessment Regulation 2000

The proposed development does not satisfy Clause 115(1)(h) in which if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner). Owners' consent for the proposed installation of air conditioning units is yet to be provided to Council, subject to the outcome of this assessment.

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 3 November to 17 November 2017, four (4) objections were received. The issues raised in the submissions are discussed above.

Conclusion

The proposal fails to demonstrate a reduction in the noise impact to satisfy the Bayside Planning Panel recommendation in creating a highly-liveable urban place and the original development consent outcomes. The proposed extension of the southern loading dock of Aldi Store operating hours cannot be supported and the proposal is therefore recommended for REFUSAL.

Attachment

26 October 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 and write in response to the Planning Panel's determination on 10 October 2017. This application was considered by the Bayside Planning Panel on 10 October 2017 with the following determination (Agenda Item No. 5.1) *"That this application be deferred to allow the applicant to provide further details in regard to revised measures which reduce the noise impacts so as to reasonably satisfy the objective to create a highly-livable urban place and satisfy the original development consent outcomes."*

Further, this submission addresses an email from Council Officer Olivia Yana dated 13 October 2017, which requested the following information be provided to Council:

1. *"Modify proposed hours of loading dock as discussed in the meeting;*
2. *Amend the loading dock plan of management to reflect the proposed operation, including, but not limited to, the operation details of the other existing docks within the southern loading area and lighting required for the night activity;*
3. *Provide design details of noise attenuation measure, such as acoustic treatment on fencing within the subject site; and*
4. *Provide updated noise report with modified proposed hours, recommended noise attenuation measure and operation details of the other existing docks within the southern loading area. The noise report must satisfy the performance condition (Condition No. 26) of the original consent in relation to exceedance of noise criteria shall not be greater than 5db(A), particularly for the top floor units at No. 10 Devitt Place."*

Please find enclosed with this letter the following:

- ALDI Hillsdale Addendum Report Addendum prepared by Wilkinson Murray Pty Limited dated October 2017 (**Attachment A**).
- Southern Loading Dock Plan of Management (**Attachment B**).
- Acoustic Barrier Costing prepared by Donald Cant Watts Corke dated October 2017 (**Attachment C**).

Further Acoustic Assessment

Following the Planning Panel meeting, a Noise Assessment Report Addendum has been prepared by Wilkinson Murray dated 26 October 2017 (refer to **Attachment A**). The addendum recommends the following noise attenuation measure to control the impact of noise levels from the extended ALDI delivery timeframe which will result in reduced internal noise levels:

- Offer the installation of air-conditioning (at cost to ALDI Stores) for all twelve properties of 10 Devitt Place, so doors and windows can be closed during delivery times to maintain a comfortable internal temperature. This option would provide the most benefit to residents in relation to reducing the noise impacts of delivery trucks.

Installation of the air-conditioning within each dwelling will be contingent on approval of the hours of delivery proposed. It is understood that there are twelve property owners within No. 10 Devitt Place. Milestone and ALDI Stores will conduct consultation with residents regarding the installation of air-conditioning units. The total cost of installation of air-conditioning internally within each dwelling is approximately \$35,000.

In the event that the air-conditioning is not accepted, the installation of a 1.8m high fence on the western boundary of the delivery access entrance could be erected, however would not be as effective in managing noise impacts.

Cost of Proposed Noise Attenuation Measures

ALDI Stores has modelled the cost of installing a 4.5m acoustic barrier, in context of the acoustic analysis, on the western and southern boundary of the southern loading dock that would ensure compliance with the 49dBA criterion at all floors of the apartment building. The costing prepared for ALDI Stores is \$574,005.00 (refer to **Attachment C**). Due to the excessive cost involved with installing the acoustic barrier and the resultant significant amenity impacts, including visual imposition, visual bulk and overshadowing, it is unreasonable for ALDI Stores to commit to this recommendation.

Revised Proposed Hours

In light of the above, it is respectfully requested that the Planning Panel consider alternative options that would improve the existing amenity of the adjacent residents and No. 10 Devitt Place and provide ALDI Stores with the required flexibility for deliveries to the Hillsdale ALDI Store. Therefore, 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 exclusively for the ALDI Store to be as follows:

Condition 28 Hours of operation for both 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 Holiday	10.00am to 5.00pm

Notwithstanding the above, ALDI may use the Southern Loading Dock between 6.00pm and 8.00pm Monday to Saturday and 8.00am to 8.00pm Sunday and Public Holidays.

Loading Dock Plan of Management

A revised Loading Dock Plan of Management for the Southern Loading Dock has been prepared by Milestone (held in **Attachment B**). This outlines how the extended hours will be managed to ensure adverse noise impacts are minimised. The Southern Loading Dock Management Plan states:

- The use of the extended southern loading dock delivery hours are for the exclusive use of ALDI Stores only. The ALDI Loading Dock is clearly signposted. All other users of the Loading Dock will continue to operate under the existing Loading Dock operating hours.
- Southpoint Shopping Centre Security will continue to monitor the loading dock after delivery hours to ensure no deliveries are being made outside of the approved hours.
- Southpoint Shopping Centre Security will ensure no deliveries are being made within the extended delivery hours by other users of the Southern Loading Dock.
- The gate which separates the Southern Loading Dock will be locked at 8.00pm Monday to Saturday and at 8.00pm on Sunday by Southpoint Shopping Centre to ensure no deliveries are made after the approved extended hours.

Proposed Air Conditioning to Dwellings

There are 12 separate owners within the residential flat building located at No. 10 Devitt Place. Milestone and ALDI Stores will coordinate consultation with unit owners to arrange the installation of air-conditioning units for each dwelling at a cost to ALDI Stores.

Conclusion

In summary, we consider the further acoustic analysis outlined within the Noise Assessment Addendum prepared by Wilkinson Murray provides sufficient evidence and justification regarding the appropriateness of an extended delivery hours of between 7am to 8pm Monday to Saturday and 8am to 8pm Sunday and Public Holiday. Milestone recommends that the Planning Panel endorse this proposal which would include the installation of air-conditioning to all twelve units within No. 10 Devitt Place to ensure the neighbourhood amenity is improved for No. 10 Devitt Place units.

The proposed noise attenuation measure would ensure that the development can operate and be consistent with the objective within Condition No. 10 of development Consent 01/537, which states "*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.*"

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

ATTACHMENT A

**NOISE ASSESSMENT REPORT ADDENDUM PREPARED BY WILKINSON MURRAY PTY
LIMITED DATED OCTOBER 2017**

ALDI HILLSDALE ADDENDUM REPORT

NOISE ASSESSMENT OF EXTENDED DELIVERY HOURS

REPORT NO. 99204-H2-A
VERSION A

OCTOBER 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	26 October 2017	Barry Murray	Sean Flaherty

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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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1 INTRODUCTION

Wilkinson Murray Report No. 99204-H2 addressed the noise impact of extending the hours of ALDI delivery to the Southpoint Shopping Centre at 238-262 Bunnerong Road, Hillsdale. This Addendum Report provides further information in regard to the noise impact of the extended hours.

The currently approved hours for delivery to the southern loading dock are as follows:

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

ALDI seeks an extension to the approved delivery hours to allow for deliveries to occur during the following hours:

- Monday to Saturday 7.00am-8.00pm
- Sunday & Public Holidays 8.00am-8.00pm

The hours now sought for Sunday and Public Holidays are slightly reduced in comparison to the original s96 Application.

This report particularly addresses the noise impact associated with the extended hours in accordance with the Application, as follows:

- Monday to Saturday 6.00pm-8.00pm
- Sunday & Public Holidays 8.00am-10.00am / 5.00pm-8.00pm

2 NOISE ASSESSMENT & NOISE MITIGATION

As indicated in the original report (Report No. 99204-H2) the noise criterion for the extended hours has been set at $L_{Aeq,15min}$ 49dBA, particularly applying to the apartments at 10 Devitt Place.

The $L_{Aeq,15min}$ noise levels predicted from one ALDI truck entering and reversing into the dock or leaving the dock, turning and departing was predicted as 63dBA at the Devitt Place apartments. The predicted level is 14dB above the 49dBA noise criterion.

In the original report, it is recommended that the 1.8 metre high Colourbond fence between the apartments and the dock be extended around the corner and along the full length of the boundary adjacent to the access lane. Whilst the Colorbond fence would reduce noise levels at the ground floor of the apartment building, the first and second floors would not be affected by the fence leaving the delivery noise levels over the noise criterion.

Subsequently, further analysis has been carried out to ascertain the acoustic barriers that would be required to ensure compliance with the 49dBA criterion at all floors of the apartment building.

It is concluded that the following would be required:

- A 4.5 metre high barrier near the boundary along the length of the access lane with a 5 metre horizontal section (roof) partly over the lane. The 5 metre horizontal section could be supported on a structure which would extend across the lane and may be fixed to the existing shopping centre building; and
- A 4.5 metre high noise barrier on the boundary between the dock and the apartments with a 2 metre cantilevered section extending out over the dock turning area at 45 degrees.

The position and description of the required barriers are shown in Figure 2-1, Figure 2-2 and Figure 2-3.

Figure 2-1 Noise Barriers required for compliance of delivery noise with noise criterion

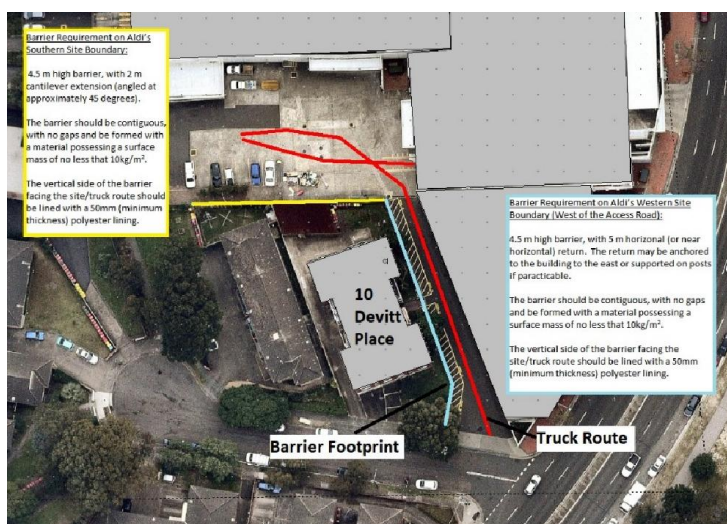


Figure 2-2 Perspective of access lane noise barrier

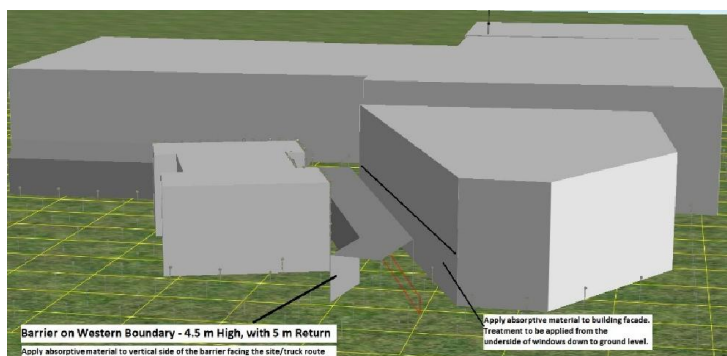
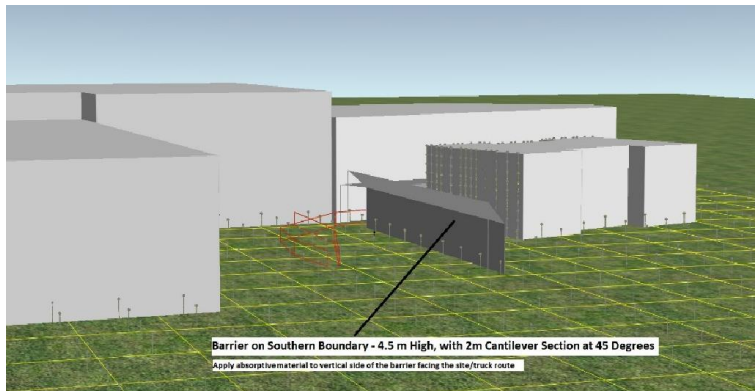


Figure 2-3 Perspective of dock noise barrier



The large barriers required would require substantial footings and structure with the vertical section likely constructed of concrete panel or masonry and the roof section or cantilevered section likely constructed of steel sheet.

Analysis has revealed that the required noise barriers are prohibitive in cost and they represent a major visual impact in the area. Decision has been made not to implement the required barriers.

As an alternative, the following mitigation is now proposed to control the noise impact at 10 Devitt Place.

- No extension of the 1.8 metre high Colorbond fence along the access lane; and
- An offer to provide air-conditioning to all apartments at 10 Devitt Place to allow the windows to be closed for noise control purposes at any time.

The offer of air-conditioning is contingent upon approval of the extension of hours being sought.

If the offer of air-conditioning is not accepted, the 1.8 metre high Colorbond fence along the access lane could be constructed. However, this fence will not be as effective in reducing the noise impact as the air-conditioning.

3 CONCLUSION

In order to control the impact of noise levels from ALDI deliveries during the proposed extended hours, it is proposed to offer air-conditioning for the apartments at 10 Devitt Place to allow windows to be closed for noise control purposes. This form of mitigation will result in reduced internal noise levels, including during the currently approved delivery hours.

If the offer of air-conditioning is not accepted, a 1.8 metre high Colorbond fence could be constructed along the access lane.

ATTACHMENT B

**SOUTHERN LOADING DOCK PLAN OF MANAGEMENT PREPARED BY MILESTONE DATED
OCTOBER 2017**

OCTOBER 2017

1.0 USERS OF THE SOUTHERN LOADING DOCK

The uses of the southern loading dock include:

- **ALDI Stores**
Up to three deliveries (17.6m length truck for groceries and household goods) and one rigid vehicle delivery (for bread) each day between 7am and 8pm Monday to Saturday and 8am and 8pm Sunday and Public Holidays.
- **Red Dollar Store**
Up to four deliveries per week between 10.00am and 2.00pm.
- **Chemist Warehouse** (Future Development Application)
One 4 tonne van daily, and two truck deliveries per week between 9.00am and 5.00pm. We understand that a Development Application will be lodged to Council for approval to construct an additional delivery dock, with a view to commence deliveries in early 2018.
- **Southpoint Apartments**
The waste collection room is located next to the existing ALDI loading dock. Rubbish collection occurs typically on Fridays between 7.20am and 10.00am.



Photo 1: The ALDI Loading Dock (view east)

Clearly
signposted as
the ALDI
Loading Dock



Photo 2: The Waste Collection Roller Door (view east)



Photo 3: The Red Dollar Loading Dock (view north)



Photo 4: Future Chemist Warehouse Loading Dock (Approximate location)

2.0 BACKGROUND

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 Addendum prepared by Wilkinson Murray Pty Limited (Wilkinson Murray) dated October 2017.

3.0 OPERATIONAL DETAILS

3.1 Delivery Hours

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

"28 *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 8.00pm</i>
<i>Saturday</i>	<i>7.00am to 6.00pm</i>
<i>Sunday and Public Holiday</i>	<i>10.00am to 5.00pm"</i>

This Section 96(2) Modification Application seeks to amend Condition No. 28 of Notice of Determination 01/537 to extend the delivery schedule to allow deliveries from 7.00am to 8.00pm Monday to Saturday and 8.00am to 8.00pm on Sunday and Public Holidays for the southern loading dock to be used exclusively by the ALDI Store, as follows:

Monday to Friday	7.00am to 8.00pm
Saturday	7.00am to 8.00pm
Sunday and Public Holiday	8.00am to 8.00pm

The extended hours of delivery will be for the exclusive use of ALDI delivery vehicles only. The ALDI Loading Dock is signposted clearly. All other users will operate deliveries as per existing hours within the Southern Loading Dock.

3.2 Location and Delivery Vehicle Access

The ALDI loading dock bay is located at the southern end of the southern loading dock 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.

Delivery trucks for Red Dollar and Waste Collection vehicles currently access the site from Devitt Place also.

3.3 Number and Type of Deliveries per day for the ALDI Store

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 ALDI deliveries to the southern loading dock between 7.00am and 8.00pm Monday to Saturday and 8.00am to 8.00pm on Sunday and Public Holidays.

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.

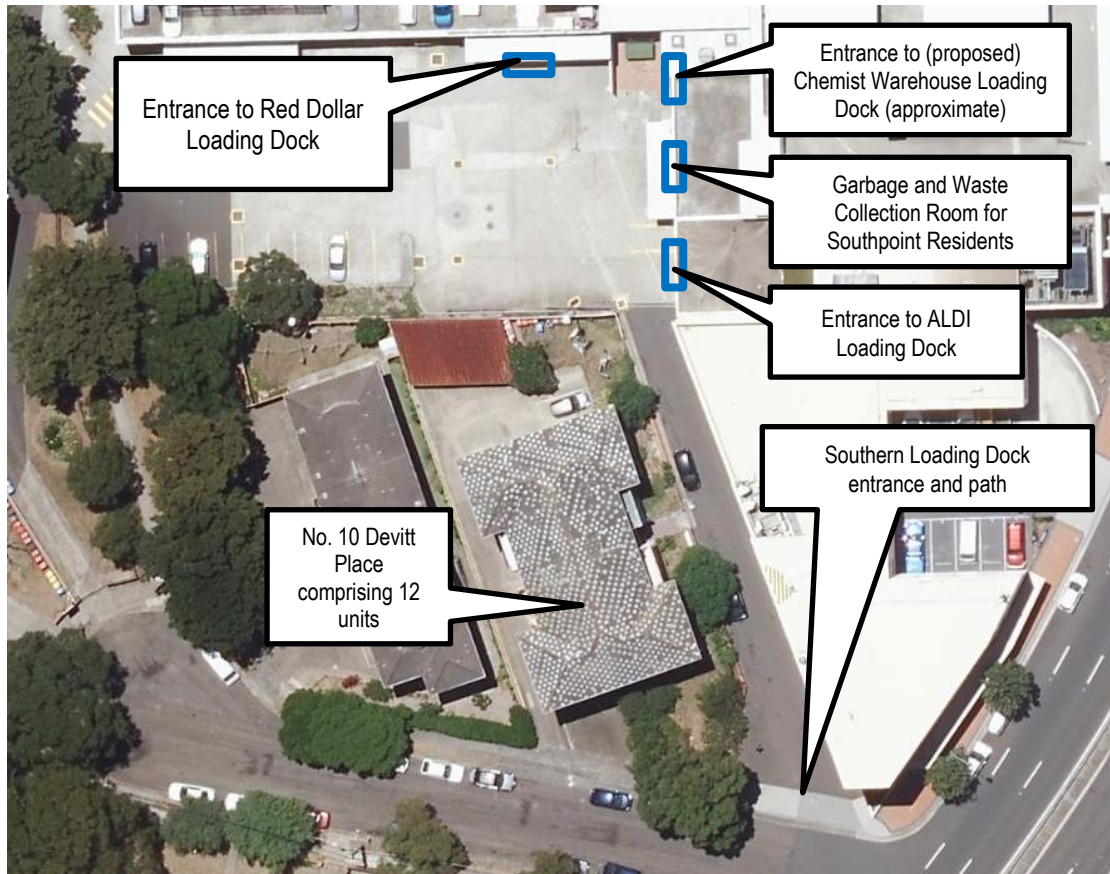


Figure 1: Southern Loading Dock
Source: Milestone

3.4 Delivery Procedure for the ALDI Store

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 2 minutes for the vehicle to enter the dock).
- 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.
- The unloading process takes approximately one hour.

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 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 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 into the dock opening.



Photo 5: ALDI Loading Dock (with sound proofing loading dock curtain)

3.5 Management of ALDI Delivery Vehicles and ALDI Loading Dock

The ALDI Store is a key retail tenant of the Southpoint Shopping Centre. 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.

Southpoint Shopping Centre Security will monitor the loading dock after delivery hours to ensure no deliveries are being made outside of the approved hours.

Southpoint Shopping Centre Security will ensure no deliveries are being made within the extended delivery hours by other users of the Southern Loading Dock.

The gate which separates the Southern Loading Dock will be locked at 8.00pm Monday to Saturday and at 6.00pm on Sunday by Southpoint Shopping Centre to ensure no deliveries are made after the approved extended hours.

3.6 Air Conditioning to dwellings in No. 10 Devitt Place

There are 12 separate owners within No. 10 Devitt Place. Milestone and ALDI Stores will coordinate consultation with unit owners to arrange the installation of air-conditioning units for each dwelling at the cost to ALDI Stores.

MILESTONE (AUST) PTY LIMITED

ATTACHMENT C

**ACOUSTIC BARRIER COSTING PREPARED BY DONALD CANT WATTS CORKE DATED
OCTOBER 2017**

ACOUSTIC BARRIERS
BAYSIDE PLANNING PANEL

SUMMARY OF COSTS - 23 OCTOBER 2017

TOTAL COST OF WESTERN BARRIER AND ROOF	\$ 264,491.10
TOTAL COST OF SOUTHERN BARRIER AND ROOF	\$ 215,208.40
TOTAL COST OF BUILDING FAÇADE	\$ 94,305.60
COST OF ALL ACOUSTIC TREATMENT	<u>\$ 574,005.10</u>

A ALDI Western Barrier

Total

Wall (4.5m High)	216	m2		
Concrete footings - Assume every 5 metres for columns	11	No	\$ 1,250.00	\$ 13,750.00
Primary Steel - Assume 30kg/m	1,485	kg	\$ 7.00	\$ 10,395.00
Bracing - Assume 5kg/m2	1,080	kg	\$ 7.00	\$ 7,560.00
Wall footing	48	m	\$ 300.00	\$ 14,400.00
Hebel wall lining	216	m2	\$ 140.00	\$ 30,240.00
50mm Polyester lining	216	m2	\$ 30.00	\$ 6,480.00
Peforated metal sheeting	216	m2	\$ 225.00	\$ 48,600.00
Roof (5m Wide)	240	m2		
Concrete footings - Assume every 5 metres to support roof overhang columns	11	No	\$ 1,250.00	\$ 13,750.00
Primary Steel - Assume 30kg/m	1,485	kg	\$ 7.00	\$ 10,395.00
Purlins - Assume 20kg/m2	4,800	kg	\$ 7.00	\$ 33,600.00
Roof sheeting	240	m2	\$ 60.00	\$ 14,400.00
Rainwater gutter and downpipes	71	m2	\$ 150.00	\$ 10,575.00
Lighting	1	Item		\$ 10,000.00
				\$ 224,145.00
Builders prelims and margin (18%)				\$ 40,346.10

TOTAL COST OF WESTERN BARRIER AND ROOF **\$ 264,491.10**

B ALDI Southern Barrier

Wall (4.5m High)	194	m2		
Concrete footings - Assume every 5 metres for columns	10	No	\$ 1,250.00	\$ 12,500.00
Primary Steel - Assume 30kg/m	1,350	kg	\$ 7.00	\$ 9,450.00
Bracing - Assume 5kg/m2	968	kg	\$ 7.00	\$ 6,772.50
Wall footing	43	m	\$ 300.00	\$ 12,900.00
Hebel wall lining	194	m2	\$ 140.00	\$ 27,090.00
50mm Polyester lining	194	m2	\$ 30.00	\$ 5,805.00
Peforated metal sheeting	194	m2	\$ 225.00	\$ 43,537.50
Roof (2m Wide)	108	m2		
Concrete footings - Assume every 5 metres to support roof overhang columns	10	No	\$ 1,250.00	\$ 12,500.00
Primary Steel - Assume 30kg/m	1,500	kg	\$ 7.00	\$ 10,500.00
Purlins - Assume 20kg/m2	2,150	kg	\$ 7.00	\$ 15,050.00
Roof sheeting	108	m2	\$ 60.00	\$ 6,450.00
Rainwater gutter and downpipes	66	m2	\$ 150.00	\$ 9,825.00
Lighting	1	Item		\$ 10,000.00
				\$ 182,380.00
Builders prelims and margin (18%)				\$ 32,828.40

C TOTAL COST OF SOUTHERN BARRIER AND ROOF **\$ 215,208.40**

Building Façade to East

Wall (4.5m High)	216	m2		
Furring channels to wall	216	m2	\$ 45.00	\$ 9,720.00
FC sheeting to wall	216	m2	\$ 70.00	\$ 15,120.00
50mm Polyester lining	216	m2	\$ 30.00	\$ 6,480.00
Peforated metal sheeting	216	m2	\$ 225.00	\$ 48,600.00
				\$ 79,920.00
Builders prelims and margin (18%)				\$ 14,385.60

TOTAL COST OF BUILDING FAÇADE **\$ 94,305.60**