

Our Reference: 3121
Your Reference: MCUI/2016/7117

31 January 2018

Toowoomba Regional Council
PO Box 3021 Toowoomba QLD 4350
Email: development@tr.qld.gov.au
Attn: Mark Westaway

RECEIVED
01.02.2018
**TOOWOOMBA
REGIONAL COUNCIL**

Dear Mark,

**CHANGES DURING THE APPEAL PERIOD (NEGOTIATED DECISION)
REQUEST TO MAKE REPRESENTATIONS ABOUT THE DECISION**

**DEVELOPMENT PERMIT FOR MATERIAL CHANGE OF USE (IMPACT ASSESSMENT) FOR A SHOP
LOCATED AT 71 HIGHFIELDS ROAD, HIGHFIELDS QLD 4352 (LOT 2 SP296102, EMT G SP225620)**

Planit Consulting has been engaged by Aldi Store (**Applicant**) to lodge a Negotiated Decision Notice relating to Toowoomba Regional Council (**TRC**) issue of a Development Permit on 19 December 2017. The subject site is identified as 71 Highfields Road, Highfields. TRC identify reference **MCUI/2016/7117** in respect to their decision. A copy of the decision notice as referenced is presented within **Attachment No.1** of this request.

I note the fee for TRC to process this request is calculated at [REDACTED] for the first 5 conditions plus [REDACTED] per condition thereafter. Accordingly, a fee of [REDACTED] is applicable to the assessment of this request. This fee will be paid by credit card at time of lodgement.

SUMMARY OF NEGOTIATED DECISION SOUGHT

The request relates to the following conditions:

- Condition 22 (STORMWATER DRAINAGE)
- Condition 24 (BULK EARTHWORKS OVER 50M3 OR OVER 1M CUT OR FILL)
- Condition 59 (FENCING & WALLS (GENERAL))
- Condition 71 & 72 (TRANSPORT, VEHICULAR ACCESS & PARKING)
- Condition 73 & 74 (TRANSPORT, VEHICULAR ACCESS & PARKING)
- Condition 81 (EXTERNAL PEDESTRIAN & CYCLE PATHS)
- Condition 88 (AIR QUALITY & AMENITY - AIR RELEASE LIMITS)
- Condition 94 (LANDSCAPING WORKS)

A detailed discussion regarding the amendment of the above conditions is presented herewith.

Condition 22 currently reads:

Condition 22	STORMWATER DRAINAGE
<p>As part of the Operational Works application, submit to Council for approval, a Detailed Stormwater Management Plan prepared by a Registered Professional Engineer Queensland - Civil (RPEQ) in accordance with the relevant standards in Planning Scheme Policy No. 2 - Engineering Standards – Roads and Drainage Infrastructure (PSP No.2) and State Planning Policy – July 2017 demonstrating the following:</p> <p>22.1 Stormwater is conveyed to a lawful point of discharge in accordance with the stormwater discharge conditions of this Development Approval; and</p> <p>22.2 The achievement of Water Sensitive Urban Design objectives listed in PSP No. 2 and State Planning Policy – July 2017.</p> <p>Advice Note: Rain water tanks as required in accordance with the Queensland Development Code MP4.3 can form part of the stormwater quality treatment train.</p>	

Comment:

The material submitted with the development application was supported by a Civil Engineering Report made by OPUS dated 25 November 2016. Sub-section 4 of the Civil Engineering Report addressed pre and post Stormwater and Erosion Management Actions for the development. ALDI Stores seek confirmation that the engineering proposals detailed within the above referenced Civil Engineering report are acceptable. As such, it is requested that Council specifically reference this Civil Engineering Report within Condition 22.

Condition 24 currently reads:

Condition 24	BULK EARTHWORKS OVER 50M3 OR OVER 1M CUT OR FILL
<p>In conjunction with an application for an Operational Works approval for bulk earthworks, submit to Council a Design Certificate by a Registered Professional Engineer of Queensland - Civil (RPEQ) certifying that the proposed bulk earthworks comply with Council's Planning Scheme Policy SC6.2.5 Earthworks and any referenced documents. The following details must be included in the application:</p> <p>24.1 Details of the location of any material to be sourced for fill, including the volume of fill to be moved from any particular source site;</p> <p>24.2 Details of the final location for any material to be exported from the site from excavations;</p> <p>24.3 The haulage routes that will be used. Approval for the haulage truck sizes and the final haul routes is to be obtained prior to works commencing; and</p> <p>24.4 As relevant, details identifying the source and disposal sites for material imported or exported as part of the development. Source sites and receiving sites must have a current development approval enabling them to export and accept any material, respectively.</p>	

Comment:

Discovery of fill routes and sources will only occur once the building contractor has engaged a civil contractor. This will delay the project as the earthworks (first construction task) will not be approved until the civil contractor has nominated fill sources and disposal pits.

This condition imposes an un-necessary burden on the development. It is requested that Council delete condition 24 to allow for practical commencement of works following receipt of the Operational Works approval for bulk earthworks.

Condition 59 currently reads:

Condition 59	FENCING & WALLS (GENERAL)
Where there is a change in level between adjoining properties at the boundary that exceeds 1m, the overall total height of any combination of fence and wall must not exceed 3m from the lowest adjacent finished ground level.	

Comment:

The approved plans detail a combination of fencing detail. To avoid confusion and provide certainty regarding fencing and wall treatment, the applicant appeals that specific reference to the approved plans be included within Condition 59.

Condition 71 & 72 currently read:

Condition 71	TRANSPORT, VEHICULAR ACCESS & PARKING
Existing roads must be constructed, as follows: Street: Highfields Road Classification: Sub-arterial (urban) Construction Standard: Single lane roundabout as defined in Condition 72 <i>Note: This condition is imposed pursuant to Section 665 of the Sustainable Planning Act 2009.</i>	
Condition 72	TRANSPORT, VEHICULAR ACCESS & PARKING
The design and construction of the intersection of Highfields road with the access road onto the site (access easement L) must comply with Planning Scheme Policy No. 2 – Engineering Standards - Roads and Drainage Infrastructure (PSP No.2) and must include in particular: 72.1 Design of a single lane roundabout in accordance with Austroads AGRD04B-15 Guide to Road Design part 4B: Roundabouts; 72.2 Design of a central island radius with entry geometry for a desired driver speed on the fastest leg prior to the roundabout of 50km/h, allowing for pedestrian cross road movement on all four legs and splitter islands for storage of pedestrians. The circulating carriageway must be sufficient to accommodate the turning movements of a 19.5m articulated vehicle (AV); 72.3 Consideration of safety for cyclists at the roundabout in accordance with the Department of Transport and Main Roads Technical Note 136 Providing for Cyclists at Roundabouts August 2015; 72.4 Provision of sufficient road reserve to accommodate the roundabout and verge; 72.5 Concrete kerbing and channeling; 72.6 Temporary asphalt kerbing to tapers; 72.7 Underground stormwater drainage; 72.8 Relocation of utility and Council services; and 72.9 Street lighting.	

Comment:

In accordance with s665 of the Sustainable Planning Act 2009, TRC has passed the burden of constructing (*including costs*) a single lane roundabout at the intersection to Highfields Road.

ALDI Stores would like the option of implementing a signalised intersection or roundabout. Ultimately, a signalised intersection will achieve the same objective as a roundabout. It is requested that TRC revise condition 71 & 72 to allow for either a single lane roundabout or signalised intersection.

The works are considered to benefit the wider community, not only the ALDI Store. It is an unreasonable imposition for ALDI to meet the entire cost of development. All works associated with

the roundabout or any signalisation should be considered trunk infrastructure and therefore, an offset is applicable.

Conditions 71 to 72 should be amended to clearly state that the works associated with either a single lane roundabout or signalised intersection are trunk infrastructure and creditable.

Condition 73 & 74 currently read:

Condition 73	TRANSPORT, VEHICULAR ACCESS & PARKING
Any pavement widening must join neatly to the existing pavement so that there are no specific irregularities in line or level resulting at or adjacent to the join for the length of the construction. Where necessary the existing pavement must be brought to a satisfactory standard in accordance with PSP No. 2 to allow for the above.	
Condition 74	TRANSPORT, VEHICULAR ACCESS & PARKING
All street surfacing must be in accordance with the pavement construction standards in PSP No.2.	

Comment:

Condition 73 and 74 are somewhat ambiguous. The limit of works need to be clear stated within this condition. The current pavement condition of Highfields Road is unknown. ALDI Stores should not be held liable to upgrade any unsatisfactory pavement beyond the extend of works associated with the single lane roundabout alignment to Highfields Road.

As this will benefit the wider community, these works should be creditable.

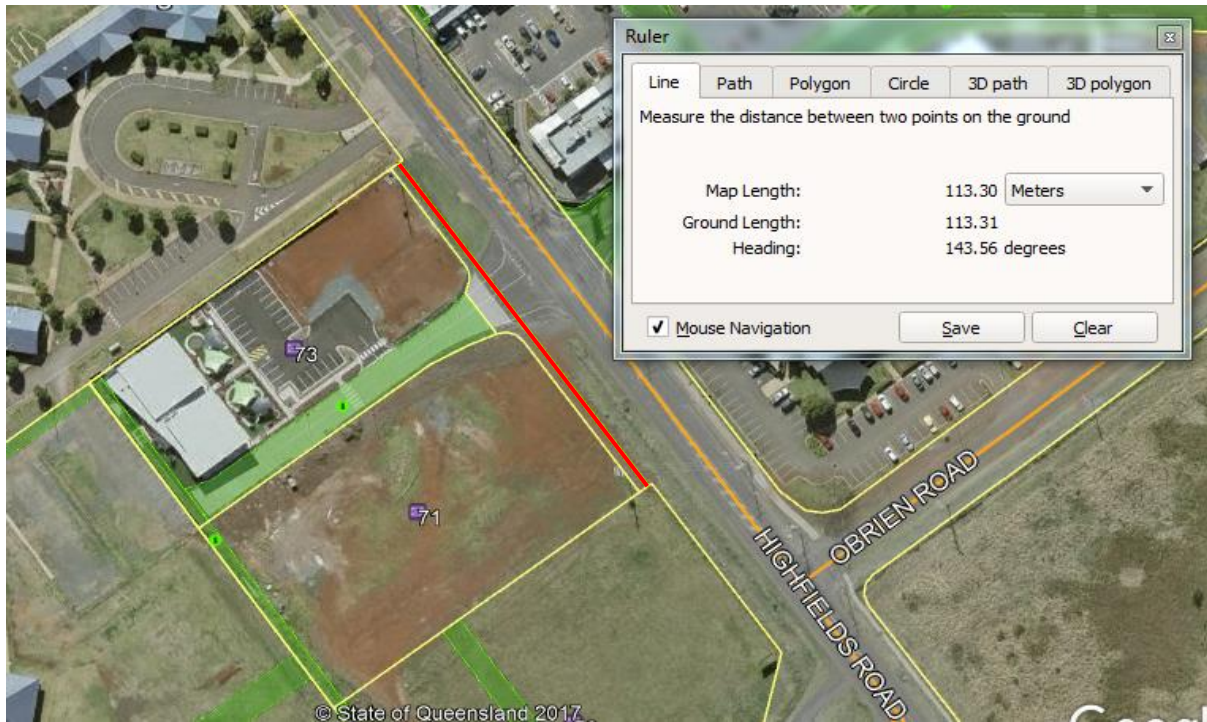
Condition 81 currently reads:

Condition 81	EXTERNAL PEDESTRIAN & CYCLE PATHS
The following works must be constructed in accordance with Planning Scheme Policy No. 2 - Engineering Standards – Roads and Drainage Infrastructure (PSP No.2)	
81.1 A 2m wide concrete pedestrian path for the full development frontage connecting the school with the roundabout crossing facilities at Highfields Road, the pedestrian access ramp serving the development site and the future path to the east of the development site;	
81.2 The required work includes any surface earthworks, grinding or saw cutting to ensure the footpath finishes flush with all existing service covers and the like, or alternatively these services are raised or altered, so as not to create a pedestrian safety hazard; and	
81.3 Any concrete footpath must comply with SEQ R-065. Where necessary, reprofiling of the verge area must be undertaken to enable the construction of concrete pathways with a maximum cross fall less than 2.5%.	
<i>Note: This condition is imposed pursuant to Section 665 of the Sustainable Planning Act 2009.</i>	

Comment:

In accordance with s665 of the Sustainable Planning Act 2009, TRC has passed the burden of constructing (*including costs*) a 2m wide concrete pedestrian path for the full development frontage connecting the school with the roundabout crossing facilities at Highfields Road.

The condition requires the applicant to construct 113m of footpath. Refer extent of works as highlighted on image below.



Condition 81 is an unreasonable demand. Why should ALDI Stores be required to upgrade footpath where not directly fronting or abutting the lot where the store is located?

ALDI Stores agree to construct 60 metres (approximately) of footpath where directly adjoining / abutting Lot 2 / SP269102 (subject site).

Suggested wording for revised condition:

Condition 81	EXTERNAL PEDESTRIAN & CYCLE PATHS
<p>The following works must be constructed in accordance with Planning Scheme Policy No. 2 - Engineering Standards – Roads and Drainage Infrastructure (PSP No.2)</p> <p>81.1 A 2m wide concrete pedestrian path for the full development frontage to Lot 2 on SP296102, connecting the pedestrian access ramp serving the development site and the future path to the east of the development site;</p> <p>81.2 The required work includes any surface earthworks, grinding or saw cutting to ensure the footpath finishes flush with all existing service covers and the like, or alternatively these services are raised or altered, so as not to create a pedestrian safety hazard; and</p> <p>81.3 Any concrete footpath must comply with SEQ R-065. Where necessary, reprofiling of the verge area must be undertaken to enable the construction of concrete pathways with a maximum cross fall less than 2.5%.</p> <p><i>Note: This condition is imposed pursuant to Section 665 of the Sustainable Planning Act 2009.</i></p>	

Condition 88 currently reads:

Condition 88	AIR QUALITY & AMENITY – AIR RELEASE LIMITS
<p>To avoid conflict with the adjacent childcare facility, unless otherwise approved in writing by Council, service vehicle movements (including loading and unloading) associated with the approved use must not occur on site between the hours of:</p> <p>88.1 6:30AM to 9:00AM and 4:30PM to 7:00PM Monday to Friday.</p> <p>88.2 Signage to deter extended engine idling must be provided at the loading bay. Signage to include wording such as “Notice – Engines must be turned off during loading and unloading”</p>	

Comment:

ALDI Stores require the flexibility of 24hr servicing to the site. The logistical constraint of precluding delivery hours between 6:30AM to 9AM and 4:30PM to 7PM Monday to Friday, will severely impact the ability of the ALDI Store to operate as intended.

Typically, ALDI Stores take delivery of fresh bread and milk within the morning trade hours. Similarly, delivery of fresh produce occurs during the afternoon / evening period. Limiting the hours of delivery will severely impact the operation of the ALDI Store.

It is noted that the childcare centre car parking area is contained entirely within their allotment. As such, no cross-utilisation or competition for car parking that could potentially impact public safety will occur. There is absolutely no merit to the condition.

ALDI Stores make note to Council that all current ALDI Store locations within the region (Kearney Springs + Clifford Gardens) are allowed 24hr deliveries. Similarly, ALDI Stores would like to retain 24hr deliveries to the Highfields Store.

Furthermore, the Acoustic Report supporting the development application acknowledged that the applicant proposed 24hr (seven days per week) operating hours. The acoustic report specifies that predicted noise levels associated with loading and unloading from the site will comply always at all sensitive noise locations.

It is requested that TRC move to support this request to have condition 88.1 **deleted** from the decision notice package.

Condition 94 currently reads:

Condition 94	LANDSCAPING WORKS
<p>Prior to the commencement of any works on site or the issue of a Building Works approval (whichever occurs first) submit to Council for compliance assessment, a detailed Landscape Plan prepared by a qualified Landscape Architect prepared generally in accordance with the conditions of this Development Approval and Approved and Approved Amended Plans and generally in accordance with Landscape Concept Plan Issue E Date June 2017 7881 LC 02, that details in particular:</p> <p>94.1 Additional canopy tree planting that attains a minimum height of 8m at maturity within the proposed landscape to achieve a high degree of shading by way of:</p> <ul style="list-style-type: none">i. one additional tree within the central carparking group (making a total of three) on the northern aspect of the development;ii. one additional tree and garden bed (replacing an existing carpark) within the carparking adjoining the northern landscape buffer;iii. four additional trees in the northern landscape buffer;iv. one additional tree and garden bed replacing a carpark on the western carparking adjoining the landscape buffer; andv. an additional two trees and garden bed sited within the concrete forecourt of the store entrance sequence to provide shading for pedestrians; <p>94.2 Designates variation in pavement colours and/or materials to define safe pedestrian movement areas;</p> <p>94.3 Utilises plant species which are characteristic of the local area and provides seasonal variation, colour and texture;</p> <p>94.4 Provides irrigation to all planted areas;</p> <p>94.5 The species to be planted and their location;</p> <p>94.6 The number and container size of plants;</p> <p>94.7 The typical planting detail including preparation, backfill, staking and mulching;</p>	

- 94.8 Internal dimensions of all planting areas;
- 94.9 Location, height and finish of fencing fronting public land (including street frontages);
- 94.10 Where street tree(s) are proposed or required as a condition of this Development Approval, the Landscape Plan must include the following additional information:
- i. Location and species of the proposed or required street tree(s);
 - ii. Typical cross section through each street typology indicating clearance of street trees from underground services, kerbs and footpaths in accordance with PSP2 Engineering Standards; and
 - iii. A planting schedule indicating the number of each species type; and

Note: Street trees required to be supplied as a condition if this Development approval must be supplied in 45L containers or as otherwise specified. Proposed street trees, if approved, are expected to be supplied in 45L containers;

- 94.11 Landscaping associated with each stage where relevant;
- 94.12 North point, scale and drawing number; and
- 94.13 Vegetated screening of the acoustic barriers in accordance with the conditions of this Development Approval.

Note: The Landscape Work Information Sheet provides further detail on the level of information required. To reference this article visit Council website <http://www.tr.qld.gov.au>

Comment:

Condition 94 is not supported by ALDI Stores. Essentially, Council are conditioning the applicant to provide 9 additional 45L trees, 3 additional garden beds and the removal of 2 onsite car parking spaces. The submitted plans depict an adequate amount of landscaping. Furthermore, there is no present of landscaping works within the local area to warrant such a prescriptive condition.

The childcare centre located to the north of site does not maintain any large canopy trees within car parking area.

Where annotated on approved plans, ALDI Stores have specifically sited shade trees to the benefit of onsite passive cooling. Furthermore, trees are strategically sited as to not become a maintenance burden once established.

It is requested that the condition be revised to reference the landscape treatment supported on the approved plans.

It is requested that the assessment manager proceed to issue an amended decision incorporating the change representation identified herewith.

The justification and arguments presented within this response is considered to have provided a sufficient level of certainty to enable TRC to support this request in its entirety.

Should you have further queries regarding this matter, please contact the undersigned on telephone number (07) 5526 1500.

Yours sincerely



Chris Selten
Town Planner
Planit Consulting Pty Ltd

ATTACHMENT

1. **DECISION NOTICE: MCUI/2016/7117**