



**ALDI Stores**

(A Limited Partnership)

ABN 90 196 565 019

**with compliments**

1 Sargents Road, Minchinbury, NSW 2770 AUSTRALIA

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**MINCHINBURY REGION**

Locked Bag 56  
St Marys Delivery Centre  
NSW 2760

Attn: Tania Halbert.

Telephone: (02) 9675 9000  
Facsimile: (02) 9675 9199

**Wyong Shire Council**

**ALDI Stores Pty Ltd**

# **Voluntary Planning Agreement**

## **Parties**

**Wyong Shire Council** ABN 47 054 613 735 of 16 Hely Street, Wyong NSW 2259 (Council)

**ALDI Stores Pty Ltd** ABN 90 196 565 019 of 1 Sargents Road Minchinbury NSW 2270 (Developer)

## **Background**

(A) The Developer intends to develop the Land for the Development.

(B) The Developer has requested the Council to enter into this Agreement to specify the breakdown of works to be completed by the Developer and Council for trunk drainage infrastructure and associated sewer main relocations and roadworks under DA/898/2010/A.

(C) The Council wishes to accept the Developer's offer to enter into this Agreement, subject to the terms in this Agreement.

## **Operative Provisions**

### **1 Planning Agreement under the Act**

The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of *The Environmental Planning and Assessment Act (NSW) 1979 (Act)*.

### **2 Application of this Agreement**

The Agreement applies to the Development.

### **3 Operation of this Agreement**

(a) The Agreement operates only if

the Agreement is entered into as required by clause 25C(1) of the Regulation.

### **4 Definitions and Interpretation**

#### **4.1 Definitions**

In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*.

**Business Day** means a day other than a Saturday, Sunday or a public holiday in Sydney, New South Wales.

**Commencement Date** means the date on which this Agreement becomes operable by the Developer giving Council written notice of its acceptance of the terms of the Development Consent in accordance with clause 3.

**Council** means Wyong Shire Council.

## Wyong ALDI – VPA

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**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging or charging the Land.

**Developer** means ALDI Stores Pty Ltd (ABN 90 196 565 019).

**Development** means retail premises including:

- (a) an ALDI Store;
- (b) associated car parking and signage;

as specified in the Development Application plans.

**Development Application** means a Development Application made under Part 4 of the Act including all modification applications to DA/898/2010/A.

**Development Consent** means the determination by approval (conditional or unconditional) of the Development Application.

**Development Contribution** means a monetary contribution, dedication of land or provision of any material public benefit to be used for or applied towards a public purpose.

**Explanatory Note** means the explanatory note relating to this Agreement, as required by clause 25E of the Regulation.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Instrument** means Wyong Local Environmental Plan 1991 and any subsequent amendments to, or Planning Instruments that supersede the Wyong Local Environmental Plan 1991.

**Land** means Lot 112 DP 555924; Lot 13 DP 658933; Lot 14 DP 658934; Lot 11 Sec 1 DP 3136; and Lot 12 Sec 1 DP 3136; (being the land having the street addresses of 146-148 Pacific Highway and 33 Hely Street, Wyong) in the Wyong Shire Local Government Area.

**LPI** means Land and Property Information and its heirs and successors.

**Occupation Certificate** has the same meaning as in section 109C of the Act.

**Party** means a party to this Agreement including their successors and assigns.

**Public Facility** means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

**Public Purpose** means any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*(NSW).

**Works** means the works described in Schedule 3.

## 4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.

## 5 Development Contributions to be made under this Agreement

Development contributions are to be made and Works are to be carried out as set out in Schedule 4 of this VPA.

## 6 Application of sections 94, 94A and 94EF of the Act to the Development and Instrument Change

This Agreement wholly excludes the application of sections 94 and 94A of the Act to:

- (a) the Development.

## 7 Registration of this Agreement

(a) The Council must procure the registration of the Planning Agreement on the relevant folios of the Torrens Title register held by the LPI pertaining to the Land as soon as reasonably practicable after the Commencement Date but in any event, no later than 40 Business Days after that date. The Developer will do such other things as are reasonably necessary to facilitate such registration.

(b) The Council agrees that upon it being satisfied that the Developer has complied with its obligations under this Agreement, Council will:

- (i) provide a release and discharge of this Planning Agreement with respect to the Land or any lot, including a strata lot, created on subdivision of the Land; and
- (ii) do all things reasonably necessary, including the execution of any necessary documents, to enable the Developer to remove the notation of this Planning Agreement on the relevant folios of the Torrens Title register held by the LPI pertaining to the Land.

## **8 Review or Modification of this Agreement**

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement and is effected in the manner required by the Act.

## **9 Dispute Resolution**

### **9.1 Reference to Dispute**

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this **clause 9**.

### **9.2 Notice of Dispute**

The Party wishing to commence dispute resolution processes must notify the other party in writing of:

- (a) the intent to invoke this **clause 9**;
  - (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this **clause 9**;
  - (c) the outcomes which the notifying Party wishes to achieve (if practicable);
- and
- (d) any material impact which the dispute has upon the completion of the Works and/or Occupation Certificate.

### **9.3 Representatives of Parties to Meet**

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 9.2**) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting;
  - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
  - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### **9.4 Neither Party may Constrain**

If:

- (a) at least one meeting has been held in accordance with **clause 9.3**; and
  - (b) the Parties have been unable to reach an outcome identified in **clause 9.3(b)(i) to (iii)**;
- and

(c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 9.3**, then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

## 10 Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
- (i) A Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
  - (ii) The Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## 11 Lapsing or invalidation

- (a) If the Development Consent is declared by a Court to be invalid or lapses, then the Developer's obligations under this Agreement will cease.
- (b) If **clause 11 (a)** applies, the Council must within 20 Business Days of the occurrence of the event, repay to the Developer any money which the Developer has paid to the Council under this Agreement, with the exception of any money paid in accordance with the requirements of **clause 14.1**.
- (c) Clause 11(b) does not apply once the Council has commenced the procurement process to undertake the works.

## 12 Notices

### 12.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

### Wyong Shire Council

Attention: The General Manager- Michael Whittaker  
Address: 16 Hely Street, Wyong NSW 2259  
Fax Number: (02) 4351 2098  
Email: [michael.whittaker@wyong.nsw.aov.au](mailto:michael.whittaker@wyong.nsw.aov.au)

### ALDI Stores Pty Ltd

Attention: Property Director  
Address: 1 Sargents Road Minchinbury NSW 2270  
Fax Number: (02) 9675 9199  
Email: [trent.doran@aldi.com.au](mailto:trent.doran@aldi.com.au)

### 12.2 Change of Details

If a Party gives the other Party three Business Days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

### 12.3 Giving of Notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.

### 12.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## 13 Assignment and Dealings

### 13.1 Dealings with Land

(a) The Developer must not settle or complete any Dealing unless the Developer:

- (i) first informs the proposed assignee, purchaser or other party (the **Incoming Party**) of this Agreement;
- (ii) provides the Incoming Party with a copy of this Agreement;
- (iii) enters into a novation deed with the Incoming Party and the Council, whereby the Incoming Party agrees to perform the obligations of the Developer under this Agreement; and
- (iv) pays the Council's reasonable costs in relation to the assignment and novation.

(b) Once Council is satisfied that the Incoming Party is capable of meeting the Developer's obligations under this Agreement, then the Council will promptly execute the novation deed referred to in **clause 13.1(a)(iii)** and do all things reasonably required to give effect to that deed.

### 13.2 Release

If the Developer, in engaging in any Dealing, satisfies the requirements of **clause 13.1(a)**, the Developer will be released from its obligations under this Agreement.

## 14 Costs

### 14.1 Costs of Agreement

The Developer agrees to pay or reimburse costs of the Council in connection with:

- (a) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$235, within 28 Business Days after receipt of a tax invoice from Council.



#### **14.2 Costs of Registration**

The Developer agrees to pay 50% of the costs of the registration of the Agreement.

#### **15 Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

#### **16 Further acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

#### **17 Governing law and jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **18 Joint and individual liability and benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

#### **19 No Fetter**

Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

#### **20 Representations and warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

#### **21 Severability**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

#### **22 Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

**23 GST**

**23.1 Construction**

In this clause 23:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**).

**23.2 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

**23.3 No Merger**

This clause 23 does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

**23.4 Inconsistency**

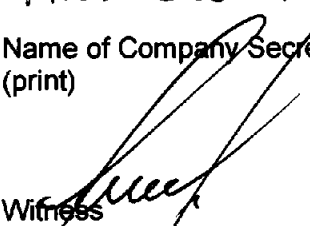
To the extent that there is any inconsistency between this clause 23 and any provision in a document executed under or pursuant to this Agreement, this clause 23 will prevail.

Executed as an Agreement.

Executed by ALDI Stores Pty Ltd (ABN 90 196 565 019)

  
Company Secretary/Director

ANDREW TINNAL  
Name of Company Secretary/Director  
(print)

  
Witness

Trust Brown  
Name of Witness (print)

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Executed by Wyong Shire Council by  
its duly appointed officer in the presence of:

Witness 

Name of Witness (print) *Karina Curtis*

General Manager 

Name of General Manager (print) *GREG McDONALD A/GM*

## Schedule 1

# ~~Draft~~ Planning Agreement Wyong Shire Council and ALDI Stores Pty Ltd



### Section 93F Requirements

<p>(1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer):</p> <ul style="list-style-type: none"><li>(a) who has sought a change to an environmental planning instrument, or</li><li>(b) who has made, or proposes to make, a development application, or</li><li>(c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,</li></ul> <p>under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.</p>	<p>Clause 1(b) applies.</p>
<p>(2) A public purpose includes (without limitation) any of the following:</p> <ul style="list-style-type: none"><li>(a) the provision of (or the recoupment of the cost of providing) public amenities or public services,</li><li>(b) the provision of (or the recoupment of the cost of providing) affordable housing,</li><li>(c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,</li><li>(d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,</li><li>(e) the monitoring of the planning impacts of development,</li><li>(f) the conservation or enhancement of the natural environment.</li></ul>	<p>Noted, refer schedule 2.</p>
<p>(3) A planning agreement must provide for the following:</p> <ul style="list-style-type: none"><li>(a) a description of the land to which the agreement applies,</li><li>(b) a description of:<ul style="list-style-type: none"><li>(i) the change to the environmental planning instrument to which the agreement applies, or</li><li>(ii) the development to which the agreement</li></ul></li></ul>	<p>Noted, refer Voluntary Planning Agreement inclusive.</p>

<p>applies,                  (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,                  (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development,                  (e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94,                  (f) a mechanism for the resolution of disputes under the agreement,                  (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.</p>	
<p>(3A) A planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement.</p>	<p>Noted. Section 94 or 94A does not apply.</p>
<p>(4) A provision of a planning agreement in respect of development is not invalid by reason only that there is no connection between the development and the object of expenditure of any money required to be paid by the provision.</p>	<p>Noted.</p>
<p>(5) If a planning agreement excludes the application of section 94 or 94A to particular development, a consent authority cannot impose a condition of development consent in respect of that development under either of those sections (except in respect of the application of any part of those sections that is not excluded by the agreement).</p>	<p>Noted.</p>
<p>(5A) A planning authority, other than the Minister, is not to enter into a planning agreement excluding the application of section 94EF without the approval of:                  (a) the Minister, or                  (b) a development corporation designated by the Minister to give approvals under this subsection</p>	<p>Noted.</p>
<p>(6) If a planning agreement excludes benefits under a planning agreement from being taken into consideration under section 94 in its application to development, section 94 (6) does not apply to any such benefit.</p>	<p>Noted.</p>

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<p>(7) Any Minister, public authority or other person approved by the Minister is entitled to be an additional party to a planning agreement and to receive a benefit under the agreement on behalf of the State.</p>	<p>Noted.</p>
<p>(8) A council is not precluded from entering into a joint planning agreement with another council or other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.</p>	<p>Noted.</p>
<p>(9) A planning agreement cannot impose an obligation on a planning authority: (a) to grant development consent, or (b) to exercise any function under this Act in relation to a change to an environmental planning instrument</p>	<p>Noted.</p>
<p>(10) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.</p>	<p>Noted.</p>
<p>(11) A reference in this section to a change to an environmental planning instrument includes a reference to the making or revocation of an environmental planning instrument.</p>	<p>Noted.</p>

## Schedule 2

# ~~Draft~~ Planning Agreement Wyong Shire Council and ALDI Stores Pty Ltd



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## Explanatory Note

### Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed planning agreement (the "**Planning Agreement**") prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* ("**the Act**").

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

### Parties to the Planning Agreement

The parties to the Planning Agreement are ALDI Stores Pty Ltd (the "**Developer**") and Wyong Shire Council ("**Council**").

The Developer owns and intends to develop certain land at 146-148 Pacific Highway and 33 Hely Street, Wyong within the Wyong Shire Council Local Government Area ("the Land").

The Planning Agreement is to be considered in conjunction with development consent DA/898/2010/A for an ALDI Store in relation to the Land under Part 4 of the Act.

The Developer has made an offer to enter into the Planning Agreement in connection with that application.

### Description of the Subject Land

The Land is located at 146-148 Pacific Highway and 33 Hely Street, Wyong in the Wyong Shire Local Government Area. The real property description of the Land is

- Lot 112 DP 555924
- Lot 13 DP 658933
- Lot 14 DP 658934
- Lot 11 Sec 1 DP 3136
- Lot 12 Sec 1 DP 3136

### Description of the Proposed Development

Development consent DA/898/2010/A for an ALDI Store; associated car parking; and signage. ("**Proposed Development**").

## **Summary of Objectives, Nature and Effect of the Planning Agreement**

The objective of the Planning Agreement is to facilitate drainage works required in Hely Street, Hardware Lane, North Road Apex Park and Pacific Highway Wyong.

The Developer and Council will complete drainage works, services relocation and associated road works extending from Hely Street to Hardware Lane and across North Road connecting to the twin cell box culvert under the Pacific Highway. The responsibility for the completion of the works by the Developer and Council is specified in Schedule 3 of the VPA. G

Council will undertake best endeavours to complete the works within 38 weeks of the Commencement Date.

The Developer agrees to the provision of a 1.0m wide easement for access and services in favour of Council along the eastern side of Hardware Lane for installation and maintenance of drainage infrastructure. All costs associated with the creation and registration of the 1.0m wide easement for access and services will be borne by Council.

Council will extinguish easement "A" Easement for Drainage 3.66 wide shown in DP 436992 (Dealings F955481 & F865009) that crosses the Land in favour of Council within 12 weeks of satisfactory completion of the drainage works. All costs associated with the relinquishment of the drainage easement will be borne by Council.

Upon execution of the Planning Agreement the Developer will withdraw the current section 96(1A) application within 30 days which seeks to remove the condition for these works to be undertaken by the applicant (DA/898/2010/B).

Upon execution of the Planning Agreement the Developer will surrender development consent DA/322/2012 for a single storey ALDI Store within 30 days.

The development contributions addressed in the Planning Agreement are not contained within the Council's Capital Works Program.

## **Assessment of the Merits of the Planning Agreement**

### **The Planning Purpose of the Planning Agreement**

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) public amenities or public services.

The Council and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above.

### **How the Planning Agreement Promotes the Public Interest**

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of trunk drainage infrastructure to cater for upstream stormwater.



**How the Planning Agreement Promotes the objects of the Act**

The Planning Agreement promotes the objects of the Act by encouraging:

- *the promotion and co-ordination of the orderly and economic use and development of land;*
- *the protection, provision and co-ordination of communication and utility services; and*
- *the provision of land for public purposes.*

The Planning Agreement promotes the objects of the Act set out above by improving drainage infrastructure servicing upstream properties in Wyong town centre.

The completion of drainage infrastructure works will have a positive public impact by reducing the frequency of stormwater overflows within Wyong town centre.

**Interpretation of Planning Agreement**

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

## Schedule 3

### ~~Draft~~ Planning Agreement Wyong Shire Council and ALDI Stores Pty Ltd



Sign  
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## Works

The Works the subject of this Planning Agreement are those works referenced on the following plans and documents, which are annexed as Annexure A to this agreement:

1. NW130122 - Correspondence from ACOR Consultants – 'ALDI Store Wyong VPA Scope of Civil Works' dated 17 December 2013.
2. NW130122 DAC1.01 – Voluntary Planning Agreement Siteworks Sheet 1 of 2 – Rev D dated 17/12/13.
3. NW130122 DAC1.02 – Voluntary Planning Agreement Siteworks Sheet 2 of 2 – Rev D dated 17/12/13.
4. NW130122 DAC1.11 – Voluntary Planning Agreement Underground Works – Rev D dated 17/12/13.

## Schedule 4

### **Draft Planning Agreement** **Wyong Shire Council and ALDI Stores Pty Ltd**

A handwritten signature in black ink is written over a grey rectangular stamp that says "sign here" in black text.

### **Development Contribution, Easements and Timing of Works (clause 5)**

**1. Monetary Contribution**

Nil.

**2. Works**

2.1 The Developer will carry out, as its cost, the Works described in the documents referred to in Schedule 3 and annexed at Annexure A as being those works that are the responsibility of ALDI Stores.

2.2 The Council will carry out, at its cost, the Works described in the documents referred to in Schedule 3 and annexed at Annexure A as being those works that are the responsibility of Council and will use its best endeavours to carry out those Works within 38 weeks of the Commencement Date.

**3. Easements**

3.1 The Developer agrees to the provision of a 1.0m wide easement for access and services in favour of Council along the eastern side of Hardware Lane for installation and maintenance of drainage infrastructure. All costs associated with the creation and registration of the 1.0m wide easement for access and services will be borne by Council. The Council will create and register the 1.0m wide easement for access and services within 12 weeks of the satisfactory completion of the Works. The terms of this easement will be as follows:

*"Easement for drainage of water*

*1 The owner of the lot benefited may:*

- (a) drain water from any natural source through each lot burdened, but only within the site of this easement, and*
- (b) do anything reasonably necessary for that purpose, including:*
  - entering the lot burdened, and*
  - taking anything on to the lot burdened, and*
  - using any existing line of pipes, and*
  - carrying out work, such as constructing, placing, repairing or maintaining pipes, channels, ditches and equipment.*

*2 In exercising those powers, the owner of the lot benefited must:*

- (a) ensure all work is done properly, and*

- (b) *cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and*
- (c) *cause as little damage as is practicable to the lot burdened and any improvement on it, and*
- (d) *restore the lot burdened as nearly as is practicable to its former condition, and*
- (e) *make good any collateral damage."*

3.2 Council will extinguish easement "A" Easement for Drainage 3.66 wide shown in DP 436992 (Dealings F955481 & F865009) within 12 weeks of satisfactory completion of the drainage works. All costs associated with the extinguishing of the drainage easement will be borne by Council.

**4. Other**

4.1 Upon execution of the Planning Agreement the Developer will withdraw the current section 96(1)(a) application within 30 days which seeks to remove the condition for the Works to be undertaken by the applicant (DA 898/2010/B).

4.2 Upon execution of the Planning Agreement the Developer will surrender development consent DA/322/2012 for a single storey ALDI Store within 30 days.

## **Annexure A**

### **Documents describing the 'Works'**

1. NW130122 - Correspondence from ACOR Consultants – 'ALDI Store Wyong VPA Scope of Civil Works' dated 17 December 2013.
2. NW130122 DAC1.01 – Voluntary Planning Agreement Siteworks Sheet 1 of 2 – Rev D dated 17/12/13.
3. NW130122 DAC1.02 – Voluntary Planning Agreement Siteworks Sheet 2 of 2 – Rev D dated 17/12/13.
4. NW130122 DAC1.11 – Voluntary Planning Agreement Underground Works – Rev D dated 17/12/13.

Ref: NW130122

17 December 2013

ALDI Stores (A Limited Partnership) - Minchinbury Region ABN:90 196 565 019  
C/- Barker Ryan Stewart

Attn: Mr Ian Stewart

Dear Ian,

**Re: ALDI Store – Wyong VPA Scope of Civil Works**

Wyong Shire Council have approved Development Application DA/898/2010A for the construction of a new ALDI Store at 146-148 Pacific Highway and 33 Hely Street, Wyong.

The Development Application Conditions require the relocation of the existing trunk stormwater system around the site.

We understand that ALDI Stores are to enter a Voluntary Planning Agreement (VPA) with Wyong Shire Council for the construction of these trunk stormwater works. The subject extent of work is from the existing low point in Hardware Lane, through to the park at the north-western corner of the Pacific Highway and North Road, Wyong. Works from this park to the existing train line are understood to be undertaken by the Roads and Maritime Services as part of the upgrade works to the Pacific Highway.

Associated with these VPA works is additional proposed upstream trunk stormwater works, from the existing trunk stormwater in Hely Street through to the existing Hardware Lane low point.

The following list and attached drawings is a breakup of the responsibilities and order of works for the scope of the civil works required.

**Definitions:**

Northern end of Hardware Lane – The length of Hardware Lane which is disturbed to construct the trunk stormwater works and service relocations

Southern End of Hardware Lane – The length of Hardware Lane south of the area disturbed to construct the trunk stormwater works and service relocations.

**WYONG SHIRE COUNCIL**

Temporary Closure of Hardware Lane, and partial closure of North Road and Hely Street

- Notification and liaison with affected neighbours as required
- Preparation of traffic management plans
- Service Relocations to enable installation of trunk stormwater
- Liaison with Authorities
- Commission design and obtain approvals



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ENGINEERS

MANAGERS

INFRASTRUCTURE  
PLANNERS

DEVELOPMENT  
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- Undertake service relocations including Sewer, Water, Electrical, Telecommunications, and Gas, which are required to be adjusted to enable construction of the trunk stormwater system.
- Construction of sewer tie for the proposed ALDI site connecting into the relocated sewer main

#### Construction of Trunk Stormwater in Hardware Lane

- Erosion control, shoring, remediation, excavation as required to install trunk stormwater culverts
- Installation of culverts (ALDI will permit use of their site as a site compound / storage of stormwater culverts, however no stockpiling is to take place of any excavated or demolished materials)
- Installation of 300mm diameter stormwater connection to service ALDI Lot to the western side of Hardware Lane
- Backfilling to the final proposed road surface levels (to prevent stormwater ponding) with materials and compaction levels to Council's DCP 2005 Chapter 67. The material is to be suitable for reuse for the pavement for the southern end of Hardware Lane
- Construction a temporary sealing course to direct stormwater to the local stormwater pits.

#### Construction of Trunk Stormwater in North Road & downstream to Pacific Highway

- All works to complete the project

#### Construction of Trunk Stormwater upstream of Hardware Lane up to the existing trunk stormwater in Hely Street

- All works to complete the project

### **ALDI STORES**

#### Service Relocations at corner of Hardware Lane and Anzac Parade

- Liaison with Authorities
- Commission design and obtain approvals
- Undertake service relocations as required

#### Hardware Lane

- For the northern end of Hardware Lane, remove temporary sealing course that was installed by Council and dispose. Remove base course that was installed by Council (for the depth required to install the final pavement) and reuse as a base material for the works along the southern end of Hardware Lane. Proof roll subgrade level in presence of Council's Engineer's. If proof roll fails due to inadequate compaction of lower pavement levels, Council to undertake recompaction works.
- For the northern end of Hardware Lane, construct final pavement surface. All to Council's DCP 2005, Chapter 67.
- For the southern end of Hardware Lane, construct all pavement works reusing temporary material from the northern end of Hardware Lane. All to Council's DCP 2005, Chapter 67.
- Construct wombat crossing connecting the two ALDI carparks
- Construction of kerb and gutter / laybacks / dish drain, either side of Hardware Lane where none currently exists
- Install all signage and linemarking

#### North Road

- Remove layback and change to kerb and gutter
- Footpath construction
- Signage and linemarking

#### Pacific Highway

- Undertake all works in Pacific Highway for the frontage of the ALDI Store

The following is a list of key engineering related DA Conditions and relevant responsibilities:

<b>DA Condition</b>	<b>Council</b>	<b>ALDI</b>
9. Dilapidation Report	Required prior to start and completion of trunk stormwater	Required after completion of trunk stormwater and completion of all works
11. Filling and Haulage	Information required for relevant scope of works	Information required for relevant scope of works
14. Roads Act	Information required for relevant scope of works	Information required for relevant scope of works
15. Plan of Management	Information required for relevant scope of works	Information required for relevant scope of works
16. Raised Pedestrian Crossing	Nil	All works by ALDI
17. Dock Linemarking	Nil	All works by ALDI
18. Road Linemarking	Nil	All works by ALDI
19. Hardware Lane Pavement	Construct pavement up to the final proposed surface levels for the northern end of Hardware Lane. Temporarily seal.	Construct kerb and gutter / layback / dish drain either side of Hardware Lane.  For northern end of Hardware Lane, remove pavement material to enable construction of final pavement surface and reuse at southern end of Hardware Lane. Construct final pavement surface.  Construct pavement for the southern end of Hardware Lane
20. Hardware Lane / Anzac Ave Intersection	Nil	All works by ALDI
21. Footpath	Nil	All works by ALDI
22. Street Trees	Nil	All works by ALDI
23. Pacific Hwy	Nil	All works by ALDI
24. North Rd Median	Need to correct Condition defining length of median	All works by ALDI
25. Existing Laybacks	Nil	All works by ALDI
26. Hely St Footpath	Nil	All works by ALDI
27. Parking Dimensions	Nil	All works by ALDI
28. Hely St Driveway	Nil	All works by ALDI
29. North Rd Driveway	Nil	All works by ALDI
30. Hardware Lane Crossing	Nil	All works by ALDI
32. Street Lighting	Relocation of light/power pole for trunk drainage installation	All other works by ALDI
33-35. Remediation	For the footprint of the trunk	For the footprint of the ALDI



	stormwater works	site area
38. Site Stormwater	Nil	All works by ALDI
39. Trunk Stormwater	All other works by Council	Removal of existing trunk stormwater culvert within ALDI site
40. Water Quality	Nil	All works by ALDI
41. Rainwater reuse	Nil	All works by ALDI
42. Vehicle Access	Nil	All works by ALDI
43. Water and Sewer	All works required to install trunk stormwater	All other works by ALDI
49. Dilapidation Report	Required prior to start and completion of trunk stormwater	Required after completion of trunk stormwater and completion of all works
50-55. Environmental Controls	As required for the scope of works	As required for the scope of works

#### REFERENCE DRAWINGS

NW130122 DAC1.01 - Voluntary Planning Agreement Siteworks Sheet 1 of 2 - Rev D dated 17/12/13

NW130122 DAC1.02 - Voluntary Planning Agreement Siteworks Sheet 2 of 2 - Rev D dated 17/12/13

NW130122 DAC1.11 - Voluntary Planning Agreement Underground Works - Rev D dated 17/12/13

Should you have any questions, please do not hesitate to contact the undersigned.

Yours faithfully,

**ACOR Consultants Pty Ltd**



Steven Wong  
Associate Senior Design Manager

**NOTES (C) WORKS TO BE UNDERTAKEN BY WYONG SHIRE COUNCIL AS PART OF THE VOLUNTARY PLANNING AGREEMENT**

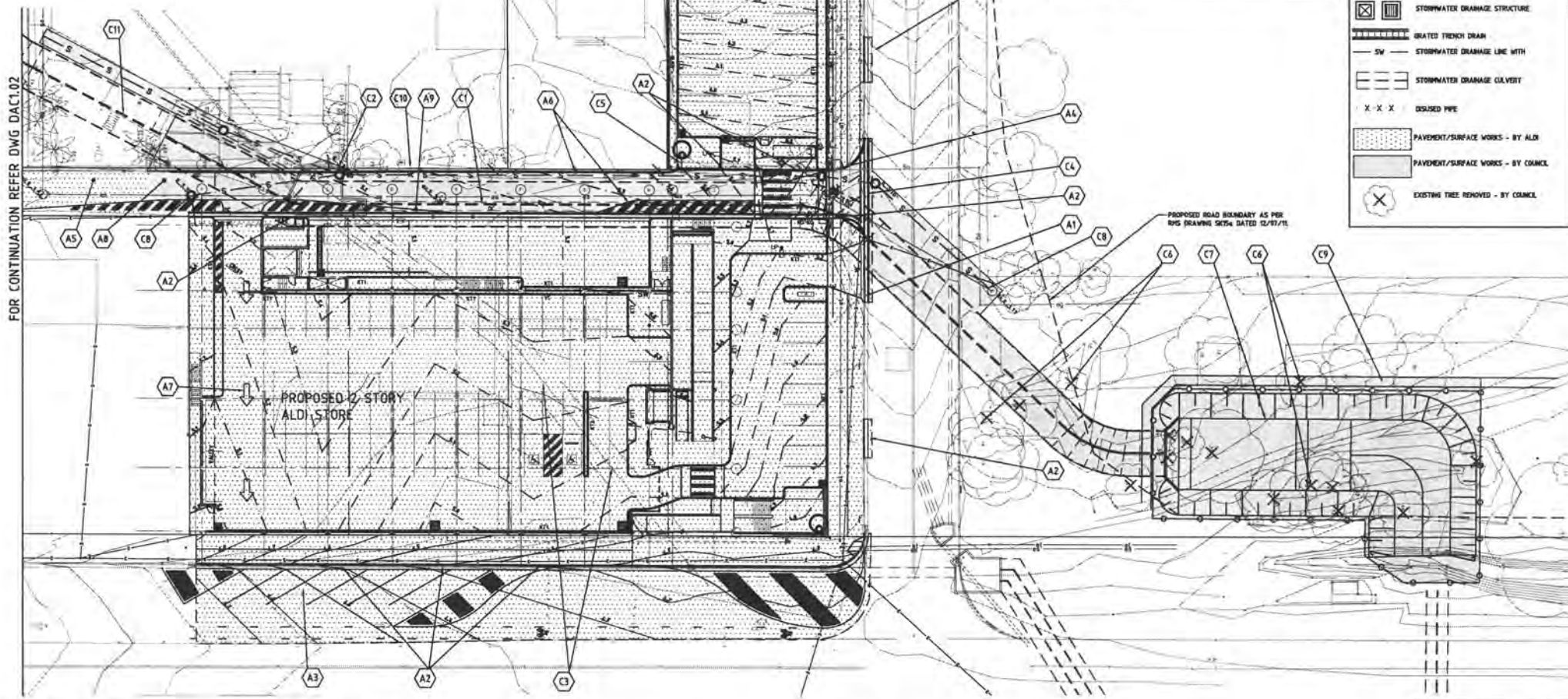
- C1. EXISTING TRUNK STORMWATER LINE TO BE REMOVED. CONSTRUCT NEW TRUNK STORMWATER LINE. RELOCATE SERVICES AS REQUIRED AND RESTATE BASE COURSE OF PAVEMENT AND TEMPORARY WEARING COURSE TO MATCH FINAL LEVELS. ALL WORKS TO WYONG SHIRE COUNCIL STANDARDS.
- C2. MAKE SMOOTH TRANSITION FROM NEW FLUSH KERB TO EXISTING KERB.
- C3. EXISTING BOX CULVERT AND STORMWATER EASMENT TO BE REMOVED.
- C4. CONSTRUCT DISH DRAIN TO WYONG SHIRE COUNCIL / RMS STANDARDS.
- C5. PROVIDE 3000# STORMWATER CONNECTION TO SERVICE PROPOSED ALDI CARPARK LOT.
- C6. TREES TO BE REMOVED TO ENABLE WORKS.
- C7. CONSTRUCT NEW ENERGY DISSIPATOR.
- C8. EXISTING SEWER LINE TO BE REMOVED. CONSTRUCT NEW INVERTED SEWER LINE. PROVIDE TE FOR PROPOSED ALDI STORE.
- C9. RELOCATED PEDESTRIAN FOOTPATH.
- C10. CONSTRUCT LAY BACK / KERB AND GUTTER AND HATCH TO EXISTING LEVELS.
- C11. FUTURE UPSTREAM DRAINAGE WORKS FROM HELY STREET TO HARDWARE LANE TO BE UNDERTAKEN BY COUNCIL.

**NOTES (A) WORKS BY ALDI**

- A1. CONSTRUCT LAYBACK AND VEHICLE CROSSING TO WYONG SHIRE COUNCIL / RMS STANDARDS.
- A2. CONSTRUCT KERB AND GUTTER TO WYONG SHIRE COUNCIL / RMS STANDARDS.
- A3. RE-LINEMARK EXISTING ANGLED PARKING.
- A4. NEW KERB / LINEMARKING ISLANDS / WOMBAT CROSSING / SIGNAGE TO WYONG SHIRE COUNCIL / RMS STANDARDS.
- A5. RECONSTRUCT HARDWARE LAKE SOUTH OF TRUNK STORMWATER WORKS TO SUIT PROPOSED VEHICLE LOADING AS INDICATED.
- A6. INSTALL ALL REQUIRED TRAFFIC, REGULATORY SIGNS AND LINEMARKING.
- A7. OVERLAND FLOW PATH THROUGH ALDI CARPARK.
- A8. REMOVE TEMPORARY WEARING COURSE AND CONSTRUCT PERMANENT PAVEMENT TO WYONG SHIRE COUNCIL STANDARDS FOR LENGTH OF HARDWARE LANE OVER TRUNK STORMWATER LINE.
- A9. CONSTRUCT DISH DRAIN TO WYONG SHIRE COUNCIL STANDARDS.

DRAWING LIST	
DWG No.	DRAWING TITLE
DACLR1	VOLUNTARY PLANNING AGREEMENT SITEWORKS SHEET 1 OF 2
DACLR2	VOLUNTARY PLANNING AGREEMENT SITEWORKS SHEET 2 OF 2
DACL11	VOLUNTARY PLANNING AGREEMENT UNDERGROUND WORKS

LEGEND	
	KERB AND GUTTER
	KERB ONLY
	INTEGRAL KERB
	DISH DRAIN
	RETAINING WALL
	STORMWATER DRAINAGE STRUCTURE
	GRATED TRENCH DRAIN
	STORMWATER DRAINAGE LINE WITH
	STORMWATER DRAINAGE CULVERT
	DESIZED PIPE
	PAVEMENT/SURFACE WORKS - BY ALDI
	PAVEMENT/SURFACE WORKS - BY COUNCIL
	EXISTING TREE REMOVED - BY COUNCIL



FOR CONTINUATION REFER DWG DAC1.02

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Rev	Description	Date	Drawn	Approved
D	ISSUED FOR VPA	11.12.13	RAS	SIW
C	ISSUED FOR VPA	26.11.13	RAS	SIW
B	ISSUED FOR VPA	15.04.13	RAS	RGE
A	ISSUED FOR REVIEW	31.05.13	RAS	RGE



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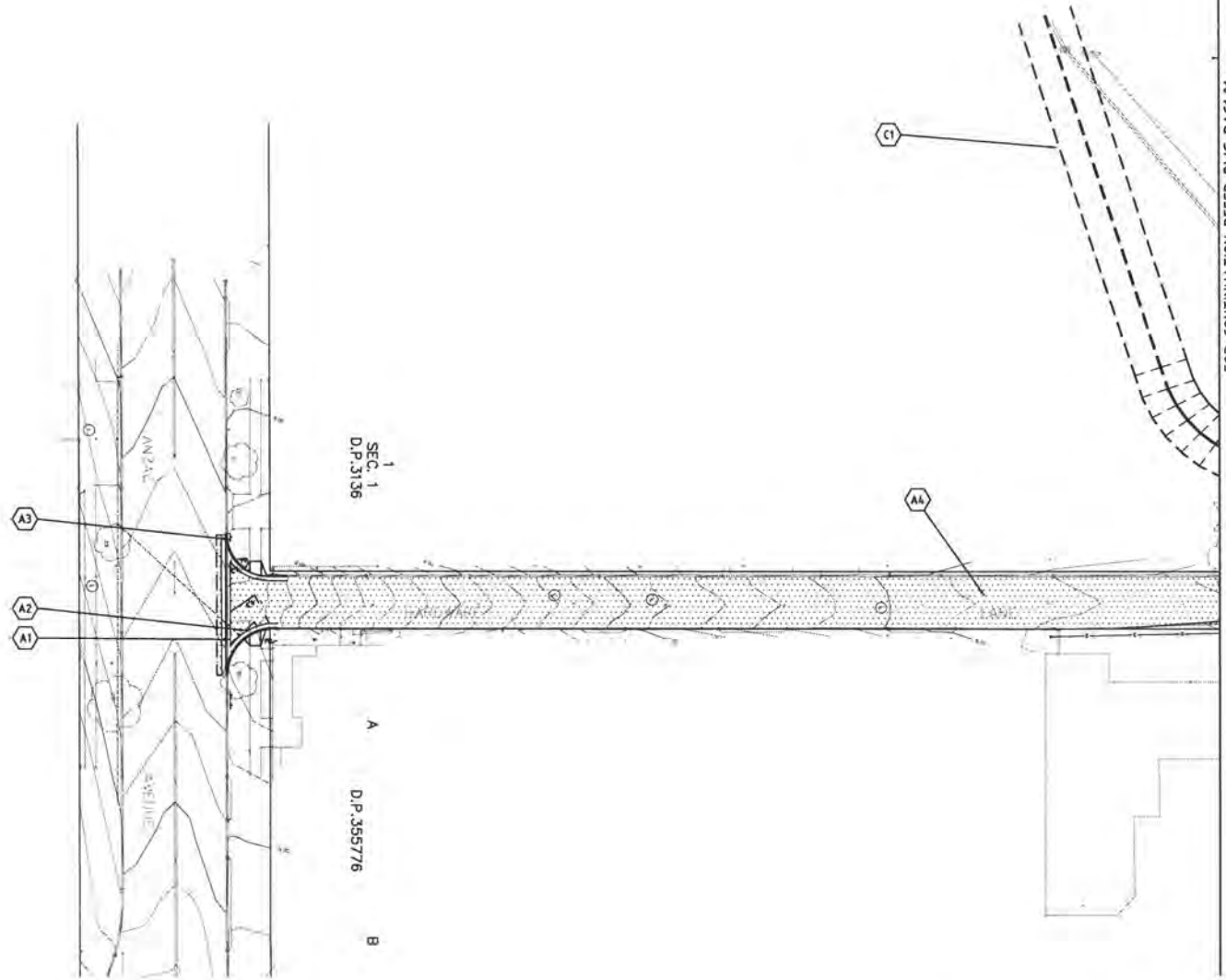
Drawing Title			
VOLUNTARY PLANNING AGREEMENT SITEWORKS SHEET 1 OF 2			
Drawn	Date	Scale	A1 C.P. Check
RAS	MAY 2013	1:250	
Designed	Project No.	Dwg No.	Sheet
RGE	NW130122	DAC1.01	D

**NOTES (A-) WORKS BY ALDI**

- A1. CONSTRUCT LAYBACK AND VEHICLE CROSSING TO WYONG SHIRE COUNCIL / RMS STANDARDS.
- A2. RELOCATE EXISTING POWER POLE.
- A3. INSTALL ALL TRAFFIC AND REGULATORY SIGNS.
- A4. RECONSTRUCT HARDWARE LANE SOUTH OF TRUNK STORMWATER WORKS TO SUIT PROPOSED VEHICLE LOADING AS HIGHLIGHTED.

**NOTES (C-) WORKS TO BE UNDERTAKEN BY WYONG SHIRE COUNCIL AS PART OF THE VOLUNTARY PLANNING AGREEMENT**

- C1. FUTURE UPSTREAM DRAINAGE WORKS FROM HELY STREET TO HARDWARE LANE TO BE UNDERTAKEN BY COUNCIL.



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Issue	Description	Date	Drawn	Approved
D	ISSUED FOR VPA	17.12.13	RAS	SRW
C	ISSUED FOR VPA	26.11.13	RAS	SRW
B	ISSUED FOR VPA	11.04.13	RAS	RGE
A	ISSUED FOR REVIEW	31.05.13	RAS	RGE



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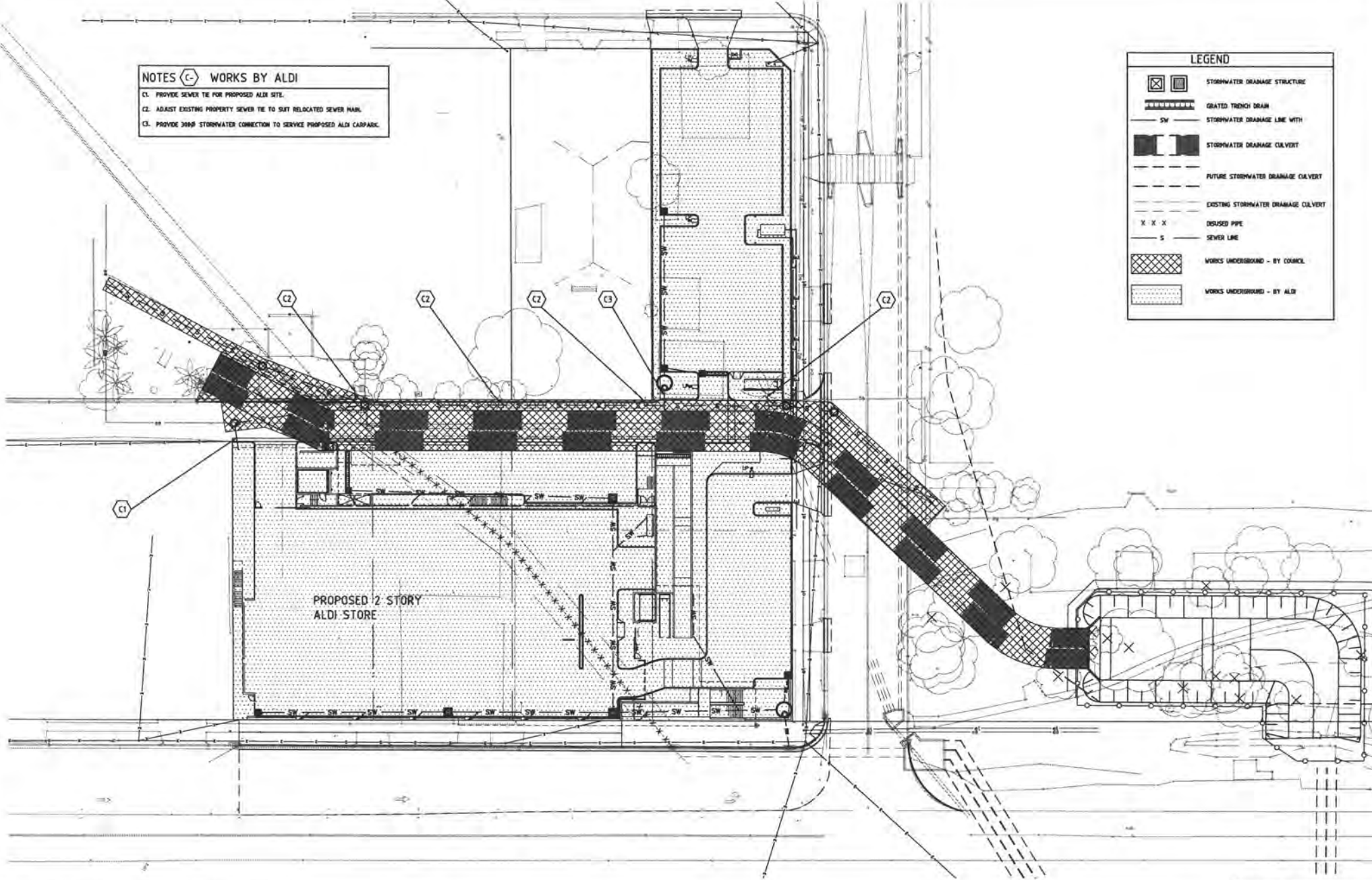
**VOLUNTARY PLANNING AGREEMENT SITEWORKS SHEET 2 OF 2**

Drawn	Date	Scale	Sheet	Total
RAS	MAY 2013	1:250	A1	2
Designated	Project No.	Dwg. No.	Issue	
ROE	NW130122	DAC1.02	D	

**NOTES** (C-) WORKS BY ALDI

C1. PROVIDE SEWER TIE FOR PROPOSED ALDI SITE.  
 C2. ADJUST EXISTING PROPERTY SEWER TIE TO SUIT RELOCATED SEWER MAIN.  
 C3. PROVIDE 300Ø STORMWATER CONNECTION TO SERVICE PROPOSED ALDI CARPARK.

LEGEND	
	STORMWATER DRAINAGE STRUCTURE
	GRADED TRENCH DRAIN
	STORMWATER DRAINAGE LINE WITH SW
	STORMWATER DRAINAGE CULVERT
	FUTURE STORMWATER DRAINAGE CULVERT
	EXISTING STORMWATER DRAINAGE CULVERT
	DISUSED PIPE
	SEWER LINE
	WORKS UNDERGROUND - BY COUNCIL
	WORKS UNDERGROUND - BY ALDI



PROPOSED 2 STORY  
ALDI STORE

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Issue	Description	Date	Drawn	Approved
D	ISSUED FOR VPA	11.12.13	RAS	SRW
C	ISSUED FOR VPA	24.11.13	RAS	SRW
B	ISSUED FOR VPA	11.04.13	RAS	RGE
A	ISSUED FOR REVIEW	11.05.13	RAS	RGE



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 WYONG, NSW

Drawn For					
VOLUNTARY PLANNING AGREEMENT UNDERGROUND WORKS					
Drawn	Date	Scale	By	Checked	Client
RAS	MAY 2013	1:250	RAS	G.A. Clark	ALDI
Designed	Project No	Drawn No			
RGE	NW130122	DAC1.11			