

ITEM NO: **5.3**  
 REPORT NUMBER: 7/20

TO: **COUNCIL ASSESSMENT PANEL**  
 DATE: **22 JANUARY 2020**  
 SUBJECT: **COUNCIL ASSESSMENT REPORT**  
 AUTHOR: **CRAIG WATSON**  
**TEAM LEADER DEVELOPMENT ASSESSMENT DEVELOPMENT OFFICER – PLANNING**

ATTACHMENTS: **1. LOCALITY PLAN**  
**2. PROPOSAL PLANS**  
**3. SUPPORTING INFORMATION INCLUDING SONUS NOISE REPORT**  
**4. REPRESENTATIONS**  
**5. APPLICANTS RESPONSE INCLUDING TECHNICAL INFORMATION AND SONUS REPORT FOR MECHANICAL DAMPERS**  
**6. MARSHALL DAY NOISE REPORT**

HEARING OF REPRESENTORS: **PAUL BATES**  
**VALARIE BROADBENT OR DOUGLAS PLAISTED**

HEARING OF APPLICANT: **TO BE ADVISED**

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DA NO.	:	110/00647/19
APPLICANT	:	BADGE CONSTRUCTION PTY LTD
LOCATION	:	437 BRIGHTON ROAD, BRIGHTON
DEVELOPMENT PLAN	:	CONSOLIDATED 2 JUNE 2016
ZONE AND POLICY AREA	:	DISTRICT CENTRE ZONE POLICY AREA 16
NATURE OF DEVELOPMENT:		MERIT
PROPOSAL	:	VARIATION TO 110/00744/16 (TWO STOREY DEVELOPMENT COMPRISING SUPERMARKET ON FIRST FLOOR WITH ASSOCIATED CAR PARK AND LOADING AREA ON GROUND FLOOR) AND 110/00097/17 (AMENDMENTS TO NORTH EASTERN CORNER, RELOCATION OF PLANT PLATFORM, SUBMISSION OF LANDSCAPE PLANS AND AMENDMENTS TO CONDITION 25) BY THE INCLUSION OF VERTICAL LOUVRES TO THE NORTHERN BUILDING ELEVATION
EXISTING USE	:	SUPERMARKET
REFERRALS	:	NIL
CATEGORY	:	TWO
REPRESENTATIONS	:	TWO
RECOMMENDATION	:	DEVELOPMENT PLAN CONSENT WITH CONDITIONS

## 1. Background

DA 110/00744/16 to construct a two storey supermarket with car parking at the ground level was granted Development Plan Consent by the Panel on 14/12/16. DA 110/0097/17 to amend the north eastern corner in accordance with DPTI requirements, relocate the roof plant platform, amend the service deliveries hours and other minor alterations was to be of a minor nature and was granted

Development Plan Consent on 20/04/17. Both decisions were appealed to the ERD Court on the grounds that both were seriously at variance with the Development Plan. The Court dismissed both appeals. Final Development Approval was granted on 4/07/18.

Following construction a complaint was received regarding noise relating to the supermarket operations including through the subject louvres.

## **2. Site and Locality**

The subject site is on the south western corner of Brighton Road and Keelara Street. The locality comprises a mix of residential, recreational, community and commercial land uses. Immediately to the west is a shop on the corner of Brighton Road and Keelara Street within the District Centre Zone and a number of dwellings facing Keelara Street within the Residential Zone.

*Refer to Attachment 1*

## **3. Proposed Development**

The development relates to 5 existing vertical air louvres each measuring 1m x 4m on the northern elevation of the building towards its western end. The louvres did not form part of the Development Plan Consent approved documents and the applicant is applying for retrospective approval.

The applicant advises that the louvres are necessary as it was identified that inadequate levels of supplementary make-up air could "leak" into the building to extract smoke build up via smoke exhaust fans in the event of fire. Alternate locations were considered including the western wall and a roof mounted solution. Both were found impracticable, the former due to 'back of house' pallet racking and handling areas which would have impeded airflow and the latter due to large free air requirement and likely creation of additional visible roof plant/cowlings to facilitate the openings.

The applicant has submitted a noise report from Sonus in support of the application.

*Refer to Attachment 2 and 3*

## **4. Public Consultation**

Due to potential noise impacts the application was not considered to be of a minor nature pursuant to Schedule 9 Part 1 Clause (2)(g) of the Development regulations. Consequently the proposed development was subject to Category 2 public notification. Two representations were received. The representations raised the following issues:

4 Keelara Street

- Vents are not sealed to prevent noise;
- Believed that loud noise that can be heard through the louvres are from the from storage area/stockroom;
- Noise can be heard from 8pm to midnight most nights;
- Other noise in the early hours from deliveries and staff arrivals; and
- Should be a solid wall as approved;

V Broadbent and D Plaisted - 6 Keelara Street

- Late night noise and lighting from louvres;
- Extreme noise from trucks loading from Keelara Street;
- Vibration noise when using loading dock;
- Truck doing three point turns from loading dock;
- Trucks not turning off reversing beepers;
- Unfinished driveway.

*Refer to Attachment 4*

The following response to submissions were made:

- The application has been amended to include the installation of mechanical dampers, which will reduce noise emission to below background noise level;
- Following installation of the dampers noise emissions will be compliant with relevant development Plan policies; and
- Issues associated with the external loading dock cannot be considered within this application however Woolworths are addressing these concerns separately.

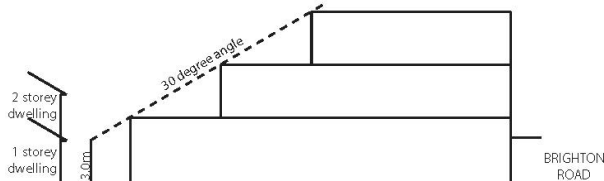
*Refer to Attachment 5*

## 5. Development Plan Provisions

### HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – NON RESIDENTIAL DEVELOPMENT – COUNCIL WIDE – PRINCIPLES OF DEVELOPMENT CONTROL

Interface between Land Uses	
1. Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following: (a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants (b) noise (c) vibration (d) electrical interference (e) light spill (f) glare (g) hours of operation (h) traffic impacts.	Complies. The current noise levels through the louvres marginally exceed the EPA criteria but will be substantially reduced following installation of the proposed noise dampers.
2. Development should be sited and designed to minimise negative impact on existing and potential future land uses considered appropriate in the locality.	Practical considerations prevent the louvres being relocated.
6. Non-residential development on land abutting a residential zone should be designed to minimise noise impacts to achieve adequate levels of compatibility between existing and proposed uses.	Complies subject to installation of the proposed noise dampers.
7. Development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant <i>Environment Protection (Noise) Policy</i> criteria when assessed at the nearest existing noise sensitive premises.	Complies. Installation of the noise dampers will achieve compliance with the EPA (Noise) Policy criteria.
8. Development with the potential to emit significant noise (e.g. industry) should incorporate noise attenuation measures that prevent noise from causing unreasonable interference with the amenity of noise sensitive premises.	Complies.

**HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – DISTRICT CENTRE ZONE – OBJECTIVES AND PRINCIPLES OF DEVELOPMENT CONTROL**

<b>BRIGHTON AND HOVE POLICY AREA 16</b>	
<b>Principles</b>	
<p>9 Development adjacent a residential zone boundary should:</p> <p>(a) be set back within the 30° angle from the zone boundary when measured from a height of three metres above natural ground level (and as shown in figure below):</p>  <p>(b) locate and design servicing and loading areas to minimise disturbance to residential amenity</p> <p>(c) provide and maintain a landscaped buffer adjacent the property boundary to provide a visual screen to adjacent residential developments</p> <p><b>(d) include acoustic treatments to building plant and equipment, service and loading areas, and fencing to minimise disturbance to residential amenity as a result of activities on the site.</b></p>	<p>Complies. The noise dampers are an appropriate treatment that will reasonably reduce amenity impact.</p>

## 6. Summary of Assessment

The representations primarily concern noise through the subject louvres however also refer to other noise sources relating to the loading dock and deliveries. It is important to distinguish between the two in consideration of the subject application, which relates solely to impacts associated with the louvres. Other noise complaints will be dealt with either as enforcement matters (if not compliant with conditions of approval) under the Development Act or the Local Nuisance and Litter Control Act.

Relevant Development Plan provisions include development that does not detrimentally affect the amenity of the locality through noise, sited to minimise negative impacts on existing land uses and in particular to include noise attenuation measures that achieve the Environment Protection (Noise) Policy criteria when assessed at the nearest noise sensitive premises.

On behalf of the applicant Sonus has assessed noise through the louvres against the EPA noise criteria. Impacts on three residential properties on the northern side of Keelara Street within the Residential Zone and one to the rear of the supermarket site within the District Centre Zone were considered. As advised by Sonus the appropriate EPA noise levels are:

- For residences within the Residential Zone:
  - Average of 57dB(A) during the day (7am to 10pm)
  - Average of 50 dB(A) at night (10pm to 7am)
- For residence in the District centre Zone:
  - Average of 62 dB(A) during the day (7am to 10pm)
  - Average of 55 dB(A) at night (10pm to 7am).

Sonus conducted noise measurements on the opposite side of Keelara Street during the day on 3 occasions and during the night on one occasion. They advise that noise from activity within the stock store was audible however it was not able to be measured accurately above traffic noise on Brighton

Road. Nevertheless continual noise monitoring within the store stock and adjacent to the louvres was measured over several days. Sonus advise that the noise levels were consistent with the relevant EPA criteria and will not adversely impact on residential amenity.

Council has engaged Marshall Day Acoustics to review that work and undertake separate noise measurements. They undertook attended noise measurements at 3 adjacent residential properties on 3 December 2019 and unattended noise measurements (by noise logger at 4 Keelara Street) between 8 and 16 November 2019. The attended noise levels marginally exceeded the recommended night time level (48dB) by 1dB at one of the properties. The unattended measurements typically ranged between 40-50dB with on one occasion exceeding the recommended night time level by 5dB. Marshall Day recommends replacing the louvres with either suitably selected louvres to reduce noise or blank off the louvres so that they are sealed and only opened in times of emergency.

The applicant advises in its response to representations that it is proposed to install mechanical dampers to the inside of the wall, which will be closed during normal operation to provide a sealed physical barrier between the buildings interior and exterior. They will automatically open in the event of a fire to act as an air intake. A comparison of predicted noise levels with and without the dampers is provided in a further Sonus report at attachment 5. Marshall Day advises that the proposed dampers would be an adequate solution in reducing noise emanating from the loading dock.

### **Conclusion**

It is apparent from the Marshall Day report that noise emitted through the subject louvres on some occasions marginally exceeds the EPA (Noise) Policy night time noise level requirements. The proposal to seal the louvres with mechanical dampers however would ensure compliance with the EPA noise policy and relevant Development Plan Principles. Accordingly it is considered that the development is not seriously at variance with the Development Plan and subject to the installation of the mechanical dampers have merit for approval.

## **7. Recommendation**

- 1. The proposed development is NOT seriously at variance with the policies in the Development Plan.**
- 2. Following detailed assessment of the proposal against the provisions of the Holdfast Bay (City) Development Plan, the Council Assessment Panel resolves to grant Development Plan Consent to Development Application 110/00647/19 subject to the following conditions:**

### **PLANNING CONDITIONS**

- 1. That the mechanical dampers as described in the URPS response to representations dated 20 November 2019 be installed prior to 21 February 2020.**
- 2. That the mechanical dampers remain closed unless in the event of a fire.**