

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LTD

PREMISES: ALDI BUTLER LIQUOR STORE

PREMISES ADDRESS: 41 BUTLER BOULEVARD BUTLER

APPLICATION ID: A000186489

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 21 APRIL 2016

Introduction

- 1 This is an application by ALDI Foods Pty Ltd (“the applicant” or “ALDI”) for the conditional grant of a liquor store licence in respect of premises to be known as ALDI Butler Liquor Store and located at Lot 2712, 41 Butler Boulevard, Butler. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. A Notice of Objection, pursuant to s 74 of the Act, was lodged by the McCusker Centre for Action on Alcohol and Youth (MCAAY), while Notices of Intervention, pursuant to s 69 of the Act, were lodged by the Executive Director Public Health (EDPH) and the Commissioner of Police (the Commissioner).
- 3 The application will be determined on the written materials lodged by the parties, as permitted under s 13 and s 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

The applicant’s evidence and submissions

- 4 According to the applicant, ALDI is one of the of the world’s leading supermarket operators, which was founded in Germany in 1913 and now has 9,000 stores across 18 countries. ALDI has been present in Australia for over 10 years with around 404 stores in the eastern states, with expansion into South Australia and Western Australia currently underway.
- 5 ALDI proposes to establish its first Western Australian supermarket at the Butler site where it has identified that there is considerable growth and demand for its products and services within the local community. It was submitted that the ALDI supermarket will be situated within a new district centre being developed, which will house a commercial and retail precinct servicing the burgeoning local community.
- 6 Some ALDI stores are stand alone, as proposed at Butler, while others are contained within shopping centres. ALDI supermarkets generally comprise a footprint of around

2,000m². ALDI proposes to supplement its supermarket services and facilities with a take-away liquor service so as to create one-stop shopping convenience for customers.

- 7 The applicant seeks to licence a small browse/display area of approximately 30m² within the supermarket. The range of liquor products comprises a selection of wines, beers, spirits, ciders and liqueurs, which will include ALDI exclusive products, made-to-order for ALDI stores. The in-store Butler range, which may vary from time to time as new products become available, will generally consist of the following:
 - 60 different wines – red, white, sparkling and fortified;
 - 16 different beers – full, medium and light strength;
 - 15 different spirits – bourbon, brandy, gin, scotch, vodka and liqueurs; and
 - 4 different ciders.
- 8 The 30m² licensed area will take the shape of a simple square and the displays will form a simple U shape at the front of the store near the checkouts. This design enables convenience and a high level of surveillance of the area. A single checkout is intended to be licensed for the purposes of the liquor sales transactions. There will be a Wanzi swing door/gate at the end of the licensed checkout and non-transparent partition at the front of the browse/display area which faces out from the supermarket.
- 9 According to the applicant, there is no cool room or other refrigeration in the liquor area, with all products being stocked and sold at room temperature. It was submitted that this unique feature further confirms the intention that the liquor service is genuinely designed to complement the supermarket and provide a one-stop ALDI shop. The liquor feature is proposed to be a true household grocery-type shopping service.
- 10 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided information on the proposed manner of trade, demographic profile of the local community and addressed the matters set out in s 38(4) of the Act. The locality surrounding the proposed liquor store includes some or all of the suburbs of Butler, Jindalee, Quinns Rocks, Alkimos, Nowergup and Merriwa. Some key demographic/health data includes:
 - the community is younger than the State average;
 - there is a much lower percentage of Aboriginal and Torres Strait Islander people living in the area;
 - at the 2011 Census, the City of Wanneroo, within which the locality is located, scored 1,025 on the Socio-Economic Index for Areas (SEIFA), which compares favourably with the top score of 1,126.5 for the Shire of Peppermint Grove and 597.6 for the Shire of Halls Creek;

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- unemployment is consistent with the State average;
 - median weekly incomes (personal, family and household) are above the State average; and
 - the locality enjoys much lower rates of alcohol-related deaths and hospitalisations overall than the State average.
- 11 According to the applicant, the demographic data indicates that the locality is enjoying a positive state of socio-economic health and is quite an advantaged area. Whilst there is some crime occurring in the locality, it was submitted that this is not significant.
- 12 In terms of impact on the amenity of the locality, it was submitted by the applicant that the supermarket and the proposed liquor store will be located in an area experiencing enormous growth and development. The ALDI store will be a new, purpose built modern facility designed to fit within the local amenity. The immediate surrounding area is retail and commercial.
- 13 The applicant commissioned Patterson Research Group (PRG), an independent research consultancy, to undertake a community survey of adult residents within the locality in order to investigate the level of support for the proposed liquor store. According to PRG, the survey found a sense of anticipation about the prospect of an ALDI store being introduced to the nearby shopping precinct, with:
- 95% of respondents indicating that they were at least “quite likely” to shop in the ALDI store;
 - 81% of respondents who have purchased packaged liquor, indicating that if shopping in an ALDI store which contained a liquor section, they would do their purchasing of their take-away liquor needs in the ALDI store;
 - 21% of respondents currently doing all or most of their take-away liquor purchasing while also shopping for household groceries; and
 - 77% of respondents who buy take-away alcohol indicating that the ability to shop for their alcohol needs in a grocery store, that had a licensed section within the store, would be more convenient.
- 14 Further, PRG stated that the introduction of a liquor section within the ALDI store will bring about quite a significant change in the way shoppers purchase their packaged alcohol needs, with increased convenience being the main driver of this change in behaviour.
- 15 The applicant submitted that the ALDI supermarket will provide a significant offering and make an enormous contribution to the area in terms of the development of retail infrastructure and the introduction of valuable services and facilities needed in a growing and developing community.

- 16 Based on the submissions and evidence provided by the applicant, it is open to conclude that the proposal has been shown to be for the benefit of the local community, where there is a real need for what is proposed and the premises will cater for the public requirements. It was further submitted that the proposed liquor store will be a low risk, low impact licensed facility and the positive aspects of the applicant outweigh any potential negatives. There are no existing liquor store services within some distance of the ALDI site and members of the public shopping at the ALDI supermarket or nearby will have to make a special driving trip elsewhere to access any packaged liquor.

The objector's evidence and submissions

- 17 It was submitted by MCAAY that the grant of the application would not be in the public interest. Essentially, MCAAY is concerned about the placement and layout of the proposed liquor store within a supermarket and next to grocery items.
- 18 According to MCAAY, alcohol is no ordinary commodity such as bread or milk, and the sale and use of alcohol comes at an enormous cost to society. The direct cost of alcohol-related problems to the Australian community in 2010 was conservatively estimated at \$14.352 billion, double the tax revenue from alcohol sales (\$7.075 billion). In terms of harm and ill-health:
- it is estimated that 75% of all police responses in WA are alcohol-related;
 - in 2014, an average of 12 ambulances a day were called to attend to Western Australians for the primary reason of alcohol intoxication (a total of 4,552 ambulance call-outs);
 - in 2014, there were 372 ambulance call-outs for alcohol intoxication for people aged 18 years or younger, including 10 children under 12 years, which equates to more than one WA child or teenager a day treated for alcohol intoxication by an ambulance; and
 - a study by the Australasian College for Emergency Medicine, which screened patients who presented to eight Australian and New Zealand emergency departments over one week in December 2014, revealed that overall, 1 in 12 presentations were alcohol-related and in peak times, 1 in 8 presentations were alcohol-related.
- 19 It was submitted that the sale of alcohol within a supermarket has the potential for alcohol to be seen as part of a normal grocery shopping experience, which would appear to be the applicant's intent, as evidenced throughout its PIA. Supermarkets are also a place where children and young people are likely to visit with or without their parents and the layout of the proposed liquor store means children will be exposed to the sale and promotion of alcohol in places where they would not normally see it. Research shows that alcohol promotion shapes young people's attitudes and behaviours, and contributes to the normalisation of alcohol use.

- 20 According to MCAAY, the current situation in Western Australia is such that alcohol is not sold inside supermarkets. Liquor stores have separate registers and entry points from supermarkets. MCAAY believes it is important that this situation remains in place in WA. The grant of this application would set a precedent for the sale of alcohol within other WA supermarkets. It was submitted that there is a commonly held, but flawed, belief that there would be benefits in moving to a “more European” approach, in which alcohol is widely available and children are introduced to alcohol at a young age which helps them learn to drink responsibly. However, this myth is not consistent with the available evidence. Recent research shows that young people who reported repeated drinking at home with their parents were more likely to report risky drinking in later adolescence than those who did not drink alcohol. It was submitted that increasing the availability of alcohol is likely to increase, rather than decrease, alcohol-related harms in Western Australia. It is important to also note that European countries including France, Italy and Spain experience higher rates of alcohol-related chronic diseases and road crashes than Australia. There is also increasing concern in France for example, about binge drinking by young people.
- 21 MCAAY also expressed concern about ALDI’s intention to sell very low priced alcohol at its stores. Woolworths and Wesfarmers are already in fierce competition when it comes to liquor prices, and the introduction of a third player may push the price of alcohol even lower, resulting in the greater economic availability of alcohol, and the potential increase in harm in the WA community. Research establishes that the price of alcohol has a significant impact on consumption and harm at the population level. When alcohol is more expensive, people drink less; and young people are particularly responsive to price. It was submitted that ALDI is already aware of the appeal of cheap liquor to young people. In response to ALDI winning an award for its \$4.99 South Point Rose, the ALDI buying director said:

“We see our market as young consumers, and they might come in for a \$5 tempranillo, and they’ll think ‘well, I had a great experience, what else can I try?’

- 22 According to MCAAY, packaged liquor, in particular, is of great concern to the public health community. Packaged liquor accounts for 78% of all alcohol sold in Australia. Packaged liquor outlet density is positively associated with rates of assault, domestic violence, chronic disease and very heavy episodic drinking. A small percentage change in the availability of alcohol through packaged liquor outlets would be expected to have an identifiable impact on levels on alcohol consumption in WA.

The interveners’ evidence and submissions

The Executive Director Public Health

- 23 The EDPH intervened in the application to make representations regarding the risk of alcohol-related harm or ill-health specific to the application, and how that risk could be minimised. The intervention was premised on the following:

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- the association of the sale of packaged liquor with general supermarket goods can reinforce alcohol as a non-harmful product and establish its cultural place as part of everyday life, shaping attitudes and behaviours towards alcohol;
 - the association of alcohol products with everyday grocery items can lead to increased consumption and harm;
 - there is a relationship between price, consumption and harm, and ALDI Butler intends to provide the public with low priced products;
 - there is an existing level of alcohol-related harm and ill-health occurring in the locality of the proposed liquor store, some of which is above the State rate; and
 - if the licence is granted, the imposition of conditions that seek to separate alcohol from the general grocery items would be an important harm minimisation approach.
- 24 The EDPH particularly expressed concern about the proposed integrated layout of the liquor browse/display area within the supermarket, the intention for alcohol and groceries to be purchased from the same checkouts and the possible impact this may have on alcohol being seen as a normal everyday commodity. According to the EDPH, the perception of alcohol as an ordinary grocery product can lead to a view that alcohol is not a product that can contribute to harm, given the de-emphasis on the drug properties of alcohol in the retail setting. Such a view may impact on drinking behaviours, such as frequency and volume of consumption, with harm, safety and wellbeing implications.
- 25 The EDPH submitted that research literature has shown an increase in alcohol consumption and harm when alcoholic products are sold from within supermarkets. Research has also established that exposure to alcohol sale, promotion and use, particularly when presented as an ordinary commodity, sends the message that alcohol is an important, necessary part of everyday life. According to the EDPH, the manner and context in which alcohol is made available within the community shapes and reinforces the drinking culture, impacting on societal views of what is deemed normal in terms of drinking patterns and behaviour.
- 26 It was also submitted that unlike dedicated liquor outlets, supermarkets are generally frequented by a larger and broader proportion of the population (including children) because of the daily 'need' type products for sale. Supermarkets selling liquor therefore increase the potential reach of alcohol-related harm, given the regular exposure to the sale and promotion of alcohol that occurs.
- 27 Impulse and unplanned purchases of alcohol may also be encouraged as a result of convenience and 'visual reminders', with ALDI customers purchasing alcohol when they would otherwise not have been considering such purchases. Studies have claimed 44% of alcoholic beverages purchased are unplanned and much of what is classified as impulse buying should be termed reminder/suggestion purchasing. A New

Zealand study of alcohol sales before and after the introduction of wine availability in grocery stores found sales of wine increased by 17% at a time when consumption of other beverages did not change. The EDPH also submitted that there is no evidence to support the applicant's claim that unrefrigerated liquor products reduce impulse purchasing and related harms.

- 28 In respect of the applicant's proposal to generally provide low priced alcohol products, the EDPH submitted that there is a relationship between price, consumption and harm. There is a considerable body of research which demonstrates that the sale of alcohol is price responsive, that is, a reduction in price can result in an increase in consumption, and vice versa. The Preventative Health Taskforce's technical report on alcohol reviewed more than fifty studies around the world indicating that when alcohol increases in price, consumption is reduced. Similarly, the World Health Organisation states that increasing alcohol price is one of the most effective strategies for reducing alcohol consumption at the population level.
- 29 Consequently, it was submitted that, in the circumstances of this application, the low price of alcohol is likely to lead to increased consumption which could impact on the health and wellbeing of not just those most at-risk, but also the broader community. The National Health and Medical Research Council provide scientifically based guidelines for the consumption of alcohol in Australia, with an increase in consumption levels posing a cumulative risk of health impacts in the community. For example, drinking 3-4 standard drinks (e.g. 2-3 glasses of wine) a day increases the risk of oral cavity and pharynx cancer by 131%.
- 30 In addition to the above, the EDPH highlighted that there is a high proportion of children in the locality of the proposed liquor store, and children and young people are an at-risk group for alcohol-related harm. In terms of the existing alcohol-related harm in the local community, the EDPH submitted that one in three recorded domestic assault offences in Butler are alcohol-related and over half of reported drink driving offences in the area involved packaged liquor consumption. For the period 1 January 2013 and 30 September 2015, Butler experienced higher rates of alcohol-related domestic assaults per 1,000 persons than the corresponding State rate.
- 31 In view of the potential risks highlighted in his submissions, the EDPH submitted that if the application is granted, the following harm minimisation conditions should be imposed on the licence:
- there must be a dedicated point of sale within the liquor browse/display area for liquor sales only, with no grocery purchases permitted at the liquor checkout;
 - the liquor display and sales area must be separated from the food/grocery display and sale area by barricading of non-see-through material over 2 metres in height;
 - the entry/exit point to the licensed area must have a gate; and
 - the licensed area must be closed off when not open for trade.

The Commissioner of Police

- 32 The Commissioner intervened because of his concerns regarding the impact of the proposed premises on the community, particularly in respect of the proposed manner of trade; theft/security; and the presence of at-risk groups. Consequently, if the application is approved, it is recommended conditions be imposed on the licence to minimise the potential harms and anti-social behaviours attributed to licensed premises.
- 33 According to the Commissioner, the proposed premises is located within a new subdivision, currently still under development. The premises will be situated on Butler Boulevard, among commercial and retail premises. The streets surrounding Butler Boulevard are residential. The Commissioner submitted that the suburbs which are most likely to be impacted by the application are Butler, Jindalee, Quinns Rocks and Alkimos. There are currently two packaged liquor outlets within the locality, being Butler IGA Plus, situated 1.3 kilometres from the premises, and the Cornerstone Liquor Store, which is 1.5 kilometres away.
- 34 In respect of existing crime in the surrounding suburbs, the Commissioner provided the following evidence:
- for the period 1 January 2014 to 31 December 2014, there were 1,572 relevant offences of which 157 were alcohol-related; and
 - for the period 1 January 2015 to 23 October 2015, there were 1,340 offences of which 129 were alcohol-related;
- 35 A closer analysis of this data indicated that:
- when the crime rates are considered on a per capita basis, the crime rates for the locality are 0.5% higher for 2014 and 0.4% higher for 2015 than the State crime rates;
 - alcohol was a contributing factor in 27.9% of all offences involving threats or violence within the locality for 2014 and 24% for 2015 (to date);
 - alcohol is a significant contributor to family and domestic violence and for the period January 2014 to October 2015 there were 626 domestic incidents in the locality, of which 165 were alcohol-related; and
 - there were 47 reported stealing offences specifically committed on liquor stores in the locality.
- 36 In summary, the Commissioner submitted that although reported crime for the locality is lower in number than other more developed and densely populated areas of the State, per capita crime rates in the locality are in fact already slightly higher than the State crime rates and levels of domestic violence incidents and anti-social behaviour are of concern, particularly for a newly developing area. Consequently, it was

recommended by the Commissioner that if the application is approved, it should be conditioned in such a way as to minimise harm in the community. Such conditions should include delineation of the licensed area; the licensed area to have its own dedicated checkout; liquor to be paid for prior to leaving the licensed area; a CCTV system; and a restriction on the external advertising of liquor products.

Determination

37 ALDI operates over 9,000 supermarkets internationally, with 405 stores in Australia. The style and manner of operation of each store in Australia is very similar; however, not all of ALDI's supermarkets in Australia are authorised to provide packaged liquor. Each State is unique in their liquor licensing legislation and the approval process to obtain a liquor licence. For example:

- ALDI has 162 supermarkets in New South Wales, of which 137 have a licensed area, however the liquor store must be separated from the supermarket by a solid and fixed structure and the liquor must be paid for before leaving the licensed area;
- ALDI has 130 supermarkets in Victoria, of which 129 have a licensed area. Victorian legislation provides for remote checkouts which do not form part of the licensed premises;
- ALDI has 104 supermarkets in Queensland, however none are licensed. This is due to restrictions in the relevant Queensland legislation whereby only the holder of a hotel licence can sell packaged liquor (with up to three detached bottleshops within a 10km radius of the hotel); and
- ALDI has 9 supermarkets (although more are planned) in South Australia, however none are licensed. Under current South Australian legislation, a liquor store must be physically separate from premises used for other commercial purposes (i.e. you cannot access the supermarket from the liquor store).

38 In respect of Western Australia, the law relating to the grant of a liquor store licence under the Act is well established. The following principles apply:

- the Act imposes an onus on an applicant for the grant of a licence to satisfy the licensing authority that the grant of the application is in the public interest (s 38(2)), and the burden of persuasion imposed on the applicant must be satisfied by evidence adduced in any particular case;
- an intervener carries no onus to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321);
- the burden of establishing the validity of any objection lies on the objector (s 73(10));

- in determining whether the grant of an application is ‘in the public interest’ I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O’Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- the factual matters which the licensing authority is bound to take into account when determining whether the grant of an application is ‘in the public interest’ are those relevant to the primary and secondary objects of the Act as set out in s 5;
- the licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations;
- The licensing authority is not bound by the rules of evidence and is to act according to equity, good conscience and the substantial merits of the case (s 16(7)); and
- the licensing authority must deal with each application on its merits (s 33) but has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest (refer *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC; *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).

40 The primary objects of the Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimise harm caused to people, or any group of people, due to the use of liquor; and
- to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

41 The secondary objects of the Act are:

- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
- to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

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- 42 At the outset, it is important to acknowledge that this is the first application for a liquor licence as part of ALDI's expansion into Western Australia. The applicant proposes to establish a supermarket in the suburb of Butler and seeks a liquor store licence in order to provide a limited range (approximately 95 lines) of packaged liquor to its customers. The proposed licensed area will be a small discreet area at the front of the supermarket, near the checkouts. All liquor sold will be at room temperature, with no refrigerated liquor products being available. Although some liquor products will be unique to ALDI, main stream liquor products will also be available.
- 43 The applicant submitted that the ALDI Butler Liquor Store is proposed to be a modest, convenient liquor service, designed to complement the applicant's supermarket and provide the public with a one-stop shopping experience. It was also submitted that the manner of trade proposed does not currently exist in Western Australia and the size, design and style of the store, the stock range and the association with an ALDI supermarket are all unique.
- 44 The objector and the interveners expressed concern about the integration of alcohol products within a supermarket environment. Research establishes a strong link between the availability and price of alcohol with increased consumption and related harms. More specifically, research has also shown an increase in alcohol consumption and harm when alcoholic products are sold from within supermarkets. Evidence from MCAAY indicates that the direct cost of alcohol-related problems in Australia in 2010 was estimated at \$14.35 billion. The Commissioner also submitted that although crime for the locality is lower in number than other more developed and densely populated areas of the State, per capita crime rates in the locality are in fact already slightly higher than the State crime rates.
- 45 I also note MCAAY's uncontroverted assertion that the supposed benefits of shifting to a 'more European' drinking culture is something of a myth, with countries such as France, Italy and Spain all experiencing higher rates of alcohol-related chronic diseases and road crashes than Australia and increasing concerns around binge drinking by young people in European countries.
- 46 In response to concerns about its proposed style and manner of operation, the applicant amended the layout of the proposed licensed premises to:
- reduce the number of licensed checkouts from five to just the one closest to the liquor browse/display area;
 - install a Wanzi swing door/gate at the end of the licensed checkout; and
 - install non-transparent partitioning at the front of the browse/display area which faces out from the supermarket.
- 47 The applicant also submitted that neither of the interveners nor the objector have had any regard for the important one-stop shopping convenience associated with the application, the significant growing number of people living in the locality nor the

significant growth and development already occurring and projected to advance. The applicant's proposal is designed to cater to both current and future demand.

- 48 It was also submitted that the liquor area will be a clearly delineated and separate area from the grocery and household retail area. In acknowledging that the sale of liquor has the potential to cause some risks, the applicant submitted that the nature of its proposal represents a very low risk that the grant of the application will negatively impact on the community.
- 49 In respect of the applicant's survey data, unsurprisingly, convenient location and competitive prices and specials (cheap liquor) rate highly in terms of appeal for a packaged liquor outlet. There is also strong support for the introduction of an ALDI supermarket in the area and 77% of respondents indicated that they would find it more convenient to purchase their packaged liquor when doing their regular grocery shopping. However, the survey data also indicated that most people do not actually purchase alcohol when shopping for groceries, with greater preference for making a special trip to a walk-in or browse facility. In considering the requirements of consumers under object 5(1)(c) of the Act, regard must also be given to the proper development of the liquor industry. It is also important to consider whether the subjective views expressed by the respondents are objectively reasonable in the context of the regulatory framework of the Act. Heenan J in *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384, said:

"Whether any particular licence application will or will not contribute to the proper development of the liquor industry or whether it will facilitate the use and development of premises in a manner which reflects the diversity of the requirements of consumers in this State are questions of fact, degree and value judgement..... I have previously concluded that the primary objects of the act set out in s 5(1)(c) are not the only or the exclusive objects of the Act and, except to the extent of any inconsistency, do not restrict considerations of the public interest required by s 33(1) or s 38(2).

Because the appellant has emphasised the potential significance of the primary objects of the Act set out in s 5(1)(c), it is necessary to observe that another primary object specified by s 5(1)(a) is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with the measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it."

- 50 In my view, the applicant's assertions concerning one-stop shopping are not consistent with the views expressed by Buss JA in *Woolworths Ltd v Director of Liquor Licensing*

[2013] WASCA 227. In this decision, Buss JA stated that it is a notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and that this social fact is reflected in the development of district and regional shopping centres. Consequently, the ability to purchase packaged liquor in large shopping centres is consistent with the one-stop shopping concept. However, the applicant's supermarket does not equate to a large suburban shopping centre. Merely purchasing grocery items and liquor at the same time does not equate to the one-stop shopping principle, but is more akin to the concept of one-trolley shopping as alluded to by the Court of Appeal in *Woolworths (WA) Limited v Liquorland (Australia) Pty Ltd, Jeffrey Charles Digwood & Ors* WASC 119 of 1993.

- 51 The provision of low priced liquor within a supermarket environment is of concern. Research data establishes a link between price, availability and harm in the community. Minimising alcohol-related harm is one of the primary objects of the Act and in this context, it is important to assess the risks associated with the grant of an application. Edelman J in *(Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC51 said:

"In assessing the overall question of whether granting the application is in the public interest it is relevant to consider the baseline level of risk and, in that context, the effect of an increase in risk from the baseline level. It may be that where an existing level of risk is greater, a small increase in risk is less likely to be tolerated. Similarly, it is relevant that there are existing 'at risk' persons who might be further affected."

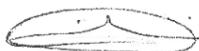
- 52 Further guidance can also be obtained from Wheeler J in *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258, where she said:

"The Act directs attention to the minimisation of alcohol related harm generally (s 5(1)(b)). The relevant question for the Court, in that case, is the level of alcohol related harm, due to the use of liquor, which is likely to result from the grant of an application. This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather it seems to me that must necessarily be assessed against any existing harm or ill health so as to assess the overall level which is likely to result if a particular application is granted. Where, as occurs in probably the majority of cases, the existing level of alcohol related harm is no greater than that which appears to be commonly accepted in the community, the distinction is probably not significant. However, where there is already a very high and serious level of alcohol related harm in a community, it may be that the Court would find a relatively small risk of increase in that level of harm to be unacceptable. In other words, it is not the "risk" of harm in some abstract sense which is relevant, but rather the risk having regard to the proved

circumstances of the particular area in relation to which the application is made.”

- 53 The applicant’s evidence establishes that the locality in which the proposed liquor store is to be located is a growing and developing part of the northern corridor and the premises is to be located in a new district centre providing commercial and retail services. Although there is some existing alcohol-related harm in the community, it is not above what might normally be expected in most suburbs, although the rate of domestic violence in the locality is of some concern. The SEIFA index indicates that the local community is not disadvantaged in terms of its socio-economic profile.
- 54 Consequently, in assessing the risks associated with the grant of the application, and having due regard to the particular area in which the proposed premises is to be located, I am of the view that the grant of the application is not contrary to the harm minimisation object of the Act. In this regard, it must be borne in mind that the Act’s harm minimisation object is not about preventing harm absolutely (refer Ipp J in *Lily Creek* supra). I am also satisfied, based on the survey data, that the grant of the application is consistent with object 5(1)(c) of the Act and the subjective views expressed by the respondents to the applicant’s surveys are objectively reasonable in the circumstances. I also note that the grant of the application is not effectively duplicating existing services in the area and the size of the browse area and the range of liquor products are modest by industry standards. However, I would add that whilst the applicant claims that the establishment of the ALDI supermarket will make an enormous contribution to the area in terms of retail and infrastructure, in my view, given the small size of the proposed liquor store and the limited range of product, the benefits to the community from the grant of the licence is not as significant.
- 55 Whilst I acknowledge the legitimate concerns of the objector and interveners, particularly in respect of the integration of liquor within a supermarket environment, in the circumstances of this case, I am of the view that the grant of the application is in the public interest.
- 56 Consequently, I am satisfied that the applicant has discharge its onus under s 38(2) of the Act and is therefore the application is approved. However, in order to mitigate some of the risks identified by MCAAY and the EDPH, and ensure greater segregation of the liquor store from the general supermarket, I am of the view that the licence should be subject to the following conditions:
- 1) The licensed browse/display area must, other than the entrance, be separated from the supermarket by a solid fixed and non-transparent structure of at least 2.5 metres high.
 - 2) All liquor must be paid for at the time of selection and before leaving the licensed premises.
 - 3) The licensee is prohibited from selling refrigerated liquor products.

- 4) There is to be no external advertising of liquor products on the facade of the licensed premises.
- 5) The browse/display area is to be closed off when not open for trade.
- 57 In terms of supervision and management of the licensed premises, I would remind the licensee of its obligations under s 100(2a) of the Act, whereby an approved manager must be present at the licensed premises at any time when business is conducted at the premises.
- 58 Therefore a liquor store licence is conditionally granted to the applicant subject to the following:
- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - (b) compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premise;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 29 January 2016.
 - (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing at least 21 days prior to applicant wishing to trade under the licence;
 - (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
 - (f) the applicant seeking confirmation of the grant on or before **20 April 2017** pursuant to s 62(4)(c) of the Act.
- 59 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 60 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 61 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
- 62 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING