

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**APPLICANT:** ALDI FOODS PTY LIMITED

**OTHER PARTIES:** CHIEF HEALTH OFFICER (INTERVENER)

**PREMISES:** ALDI CANNINGTON LIQUOR STORE

**PREMISES ADDRESS:** 1383-1387 ALBANY HIGHWAY, CANNINGTON

**APPLICATION ID:** A000223367

**MATTER:** APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

**DECISION OF:** PETER MINCHIN  
DIRECTOR LIQUOR CONTROL AND ARBITRATION

**DATE OF DETERMINATION:** 06 SEPTEMBER 2017

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### **Introduction**

- 1 ALDI Foods Pty Ltd (the applicant) has applied for the conditional grant of a liquor store licence for premises to be known as ALDI Cannington Liquor Store and located at 1383 - 1387 Albany Highway, Cannington. 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 (the Director). There were no objections to the grant of the application, however, pursuant to s 69 of the Act, the Chief Health Officer (CHO) lodged a notice of intervention.
- 3 The application will be determined on the written submissions of the parties as permitted under ss 13 and 16 of the Act. Further, this decision has been prepared, and should be read, in the context of high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.<sup>1</sup>

### **The applicant's proposal**

- 4 In accordance with the policy of the Director, the applicant submitted a Public Interest Assessment (PIA) to support its application and demonstrate that the grant of the application was in the public interest. In this regard, the PIA provided information on ALDI's business model and proposed manner of trade, the demographic profile of the locality surrounding the proposed liquor store, likely impact on the amenity of the neighbourhood and the low risk features of the proposal. The applicant also submitted a report by Patterson Research Group, who conducted a survey of consumers within the locality.

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<sup>1</sup> Refer s 16(7) of the Act.

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- 5 In essence, the applicant seeks to establish a small liquor store as part of its existing Cannington supermarket. It will be a similar concept to the other liquor stores established by the applicant, in that:
- there will be a small browse area of about 22m<sup>2</sup>, together with a single licensed checkout;
  - there will be about 95 non-refrigerated liquor products on offer; and
  - some of the liquor products will be unique to the applicant.
- 6 It was submitted that the proposed liquor store is expected to draw the majority of its custom from Cannington and East Cannington due to the fact that the Canning River physically separates ALDI Cannington from the suburbs of Ferndale and Lynwood.
- 7 According to the applicant, although Cannington is a well-established suburb, it has nevertheless experienced almost a 6% per annum growth in population from 2006 to 2011 (last available Census data). In respect of the demographic profile of the area, the following was submitted in the applicant's PIA:
- there is a lower number of children and young people in the locality compared to the State average;
  - there is a much lower percentage of Aboriginal and Torres Strait Islander persons in the locality than the State average;
  - there is an elevated number of migrants living within the locality, however, this is offset by the fact that there is a much higher number of households where more than one language is spoken (assuming that in those households English is likely to be one of those languages)
  - unemployment in Cannington is significantly above the State average;
  - median weekly incomes (personal, weekly and household) are below the State average;
  - the SEIFA<sup>2</sup> Index for Cannington is 5;
  - the City of Canning records significantly lower rates of alcohol-related hospitalisations and deaths than the corresponding State averages; and
  - criminal activity in the area surrounding the proposed liquor store would appear to be low and the number of assaults in Cannington for the period 2013 to 2015 has remained constant (143, 147 and 149).
- 8 It was submitted that harm minimisation from the sale and supply of liquor is very familiar to ALDI and at the height of operational policies. The applicant identified several key low risk elements and features of the application, including:
- the licensed area is small;
  - the bright, open-plan layout;
  - the absence of refrigeration to help avoid impulse buying and impulse drinking;
  - the limited stock range and volume;

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<sup>2</sup> Socio-Economic Indexes for Areas

- the absence of bulk quantities of cheap mainstream products;
  - the browse/display area is easily monitored by staff;
  - the clearly defined and demarcated licensed area; and
  - the lack of signage external to the store advertising discounted liquor.
- 9 The Patterson survey indicated that 83% of respondents indicated that they were quite likely to shop in the ALDI store and 76% of respondents who have purchased packaged liquor would also be quite likely to also buy their packaged liquor requirements in the liquor section.
- 10 According to the applicant, its PIA has evaluated all factors relevant to the public interest and whilst there may be a few small risks associated with the grant of the application, these can be minimised, and when weighed against the benefits to the community, the grant of the application would be in the public interest.

### **The intervention by the Chief Health Officer**

- 11 The CHO intervened in the application to highlight the risks associated with the grant of the application and how those risks could be minimised through the imposition of appropriate conditions on the licence, if approved.
- 12 Submissions were made on the following matters:
- the association of the sale of packaged liquor with general supermarket goods can position 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; and
  - there is a relationship between low cost liquor, consumption and increased alcohol-related harm, and ALDI Cannington intends to provide the public with consistently low priced alcohol products.
- 13 In respect of the existing level of alcohol-related harm in the area, the CHO advised that for the period 1 January 2014 and 31 December 2016, there were 1,068 treatment episodes, at treatment services funded by the Mental Health Commission, for people residing in the suburbs of Cannington, East Cannington, Wilson, Ferndale, Lynwood, Langford, Queens Park and Beckenham of which 27% (n=288) identified alcohol as the primary drug of concern.
- 14 The CHO also submitted a statement from the clinical coordinator at the South East Metropolitan Community Alcohol and Drug Service, who provide counselling, education and support, and prevention in respect to alcohol and other drug issues to residents of the South East Metropolitan area, which includes Cannington and surrounding suburbs. The clinical coordinator stated that the provision of cheap liquor is likely to significantly hinder their clients' implementation of harm minimisation strategies and could negatively influence children and young people to develop the perception that alcohol is a normal part of life.

## Legislative and legal framework

- 15 In determining this application, I have been guided by the following legal principles.
- 16 An applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest.<sup>3</sup> An applicant must therefore adduce sufficient evidence to discharge this burden.
- 17 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.<sup>4</sup>
- 18 An intervener carries no onus to establish their assertions of fact or opinion<sup>5</sup>.
- 19 The factual matters which I am bound to consider 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.<sup>6</sup>
- 20 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.
- 21 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.
- 22 The licensing authority is also entitled (but not bound) to consider the factual matters set out in s 38(4) of the Act as part of the public interest considerations.<sup>7</sup>
- 23 In the conduct of proceedings under the Act, the licensing authority is to act according to equity, good conscience and the substantial merits of the case. The licensing authority

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<sup>3</sup> Refer s 38(2) of the Act.

<sup>4</sup> **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.

<sup>5</sup> **Re Gull Liquor** (1999) 20 SR (WA) 321.

<sup>6</sup> **Woolworths v Director of Liquor Licensing** [2013] WASCA 227.

<sup>7</sup> **Woolworths supra**.

should also act without undue formality, is not bound by the rules of evidence and makes its determination on the balance of probabilities.<sup>8</sup>

- 24 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.<sup>9</sup> However, it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.<sup>10</sup>
- 25 Section 33(1) provides that the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest.

### Determination

- 26 The applicant seeks to establish a small packaged liquor facility with a browse area of approximately 22m<sup>2</sup> together with one licensed checkout in its supermarket in Cannington. It will be typical of the ALDI liquor store model.
- 27 The applicant submitted a detailed PIA which provided details of the local community surrounding the proposed liquor store, at-risk groups in the area, the proposed manner of trade and the likely benefits to the community if the application is granted. The applicant's evidence indicates that there is good public support for the grant of the application.
- 28 There were no objections to the application and the CHO intervened to highlight the potential risks associated with the operation of a liquor store in this locality and recommend various conditions to mitigate those risks.
- 29 Although the locality has an average SEIFA score and unemployment in the area is significantly above the State rate, based upon the evidence before me in this case, I cannot conclude that the grant of the application will result in an unacceptable level of alcohol-related harm in the community. Although the locality currently experiences some existing rates of alcohol-related harm, there is no evidence that this harm is above what might be commonly accepted in most suburbs in the metropolitan area.
- 30 I also note that the Liquor Commission expressed the view that some of the concerns raised by the CHO about the integration of alcohol and grocery items could be mitigated through the imposition of appropriate conditions on the licence.<sup>11</sup>
- 31 I find that the grant of the application would promote objects 5(1)(c) and 5(2)(a) of the Act. There does not appear to be any tension with the harm minimisation object of the Act.
- 32 Therefore, when consideration is given to the totality of the evidence presented, I am satisfied that the applicant has discharged its onus under s 38(2) of the Act and the grant of the application is in the public interest. To mitigate the risks associated with the

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<sup>8</sup> Refer s 16 of the Act

<sup>9</sup> *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

<sup>10</sup> *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.

<sup>11</sup> LC 09/2017

operation of the premises in this locality, I will impose the same conditions that the Liquor Commission considered necessary and appropriate in ALDI Harrisdale.<sup>12</sup>

- 33 A liquor store licence is therefore 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 23 December 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 **5 September 2018** pursuant to s 62(4)(c) of the Act.
- 34 On confirmation of the conditional grant, the following conditions will be imposed on the licence.

#### Trading hours

The permitted trading hours are those prescribed in s 98D of the Act.

#### Trading conditions

- 1) The licensee is prohibited from selling refrigerated liquor products;
- 2) There is to be no external advertising of liquor products on the façade of the licensed premises;
- 3) The browse/display area is to be closed off when not open for trade;
- 4) The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing;
- 5) The liquor display and sale area must be separated from the food/grocery display and sale area by barricading of non-see-through material over two (2) metres in height; and
- 6) The entry/exit point to the licensed area must have a gate.

#### Modification to Approved Manager Requirement

Pursuant to section 100(2a) of the Act, section 100 of the Act is modified so that an approved manager must be present within the ALDI supermarket store whenever business is conducted under the licence.

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<sup>12</sup> LC 09/2017

Compliance with harm minimisation policy

The licensee is to have a House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

- 35 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 36 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 37 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.
- 38 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