

## DECISION OF DIRECTOR OF LIQUOR LICENSING

**NATURE OF APPLICATION:** CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

**APPLICATION REF:** A000237254

**APPLICANT:** ALDI FOODS PTY LIMITED (APPLICANT)

**OTHER PARTY:** CHIEF HEALTH OFFICER (INTERVENOR)

**PREMISES:** ALDI KWINANA  
LOT 9501 MEARES AVENUE, KWINANA TOWN CENTRE

**DELEGATE:** B. SNELL  
DEPUTY DIRECTOR LIQUOR CONTROL AND ARBITRATION

**DATE OF DETERMINATION:** 15 MARCH 2018

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### **Preamble**

1. On 31 May 2017, an application was made to the Director of Liquor Licensing (the Director) by ALDI Foods Pty Ltd (the Applicant) for the conditional grant of a liquor store licence in respect of premises to be known as *ALDI Kwinana* and situated at Lot 9501 Meares Avenue, Kwinana Town Centre (the premises). The application was made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act) and was advertised in accordance with instructions issued by the Director. While there were no objections, the Chief Health Officer (the Intervenor) lodged a notice of intervention, pursuant to the provisions of s 69(8a) of the Act.
2. On 30 August 2017, the parties were advised that, pursuant to ss 13 and 16 of the Act, a document exchange would take place so that each party would be given a reasonable opportunity to present its case and that the application would then be determined on their written submissions.
3. As this is an administrative decision, rather than referring in detail to the entirety of the evidence before me, I will set out what I consider to be the relevant material facts. I will also outline the process of my reasoning from consideration of those material facts to conclusion, setting out the differing positions advanced by the parties. Where there has been conflict in submissions that has been significant to the outcome, I will provide reasons why I have preferred one position over another.

### **The Application**

4. The Applicant proposes to operate a small liquor store as part of the ALDI Kwinana supermarket. The proposed liquor store will be typical of the ALDI liquor store model and will have the following features:
  - (a) a small browse area of about 21m<sup>2</sup>, together with a single licensed checkout;
  - (b) about 95 non-refrigerated liquor products on offer; and
  - (c) some liquor products that will be unique to the Applicant.

5. To support its application, the Applicant submitted a Public Interest Assessment (PIA), which provided information on ALDI's business model and proposed manner of trade, the likely impact of the grant of the licence on the amenity of the surrounding locality and the low risk features of the proposal. The Applicant also submitted reports by:
  - (a) Patterson Research Group, who conducted a survey of consumers within the locality, which indicated strong support for the grant of the application; and
  - (b) Deep End Services<sup>1</sup>, who prepared a detailed description of the demographic profile of the locality surrounding the proposed liquor store and found that:
    - (i) parts of Kwinana have and always will be socially and economically challenged;
    - (ii) State Governments and the private sector have successfully renewed Kwinana's older areas and changed perceptions with new housing and fewer public housing tenants;
    - (iii) the Kwinana City Centre has been the beneficiary of major community, civic and commercial developments which are still progressing and have also changed the image of Kwinana as an area catering to the older population base and new families moving to new estates; and
    - (iv) as Kwinana continues to grow at very high rates the socio-demographic profile will shift towards young and growing families with high workforce participation levels and these families will have an expectation for the same services available in other outer areas.
6. To show how popular ALDI's supermarkets are, the PIA also outlined how ALDI had attracted over one million customers in Western Australia within just two months of opening in the State and, with just a few stores operating, had served approximately 3.2 million WA shoppers by the end of 2016. Further, it was submitted that the liquor store will be a small but important feature of the popular ALDI Kwinana Supermarket and serve both the local and wider community.
7. The Applicant also submitted that it prides itself on consistently competitive pricing across all its product lines and providing customers with exceptional value for money, particularly by maintaining prices at a consistently low level and as a result, a Roy Morgan survey found ALDI to be the best value liquor retailer.
8. The Applicant identified that the three kilometre locality radius of the proposed premises included the suburbs of Kwinana Town Centre, Postans, Leda, Medina, Orelia, Parmelia, Wellard and Calista and submitted that the City of Kwinana's residential population is rapidly expanding, which shows a clear need for the number and range of service providers in the area to also increase to meet demand and *ALDI Kwinana* will ensure that consumer requirements of packaged liquor in the locality will be met, while also supporting the needs of the increasing resident population and generally advancing shopping facilities.

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<sup>1</sup> An economic research and property consulting firm, which provides a range of services including market assessments

9. In the Applicant's consideration of the locality's demographic profile, it was noted that:
  - (a) locality indicators sourced from the 2011 Census suggest that the socio-economic standing of the locality is somewhat below the State average; and
  - (b) when whole-of-Australia statistics are considered, the City of Kwinana scores a decile of 5 out of 10 on the Socio-Economic Indexes for Areas (SEIFA), which means that it represents an average Australian local government municipality and is neither advantaged or disadvantaged.
10. The Applicant also submitted that according a report by the Drug and Alcohol Office entitled *Alcohol-related hospitalisations and deaths in Western Australia* (2014), the City of Kwinana showed "significantly lower" rates of alcohol-related hospitalisations and deaths than the corresponding State averages, which indicates that the area is in a positive state of social health.
11. The Applicant also noted that crime rates are another indicator of social wellbeing and referenced data published by the Western Australian police for offences of assault, burglary (dwelling), burglary (other), graffiti, robbery and steal motor vehicle, concluding that while there is some level of crime occurring in the locality, it did not appear to be at levels to warrant special consideration.
12. When referencing its strategies to minimise harm or ill-health, the Applicant submitted that one of its main strategies has been to establish and maintain the low risk ALDI liquor model, including that the licensed area will be very small with no refrigerated products.
13. In its consideration of outlet density, the Applicant identified eight existing licensed premises within the locality that are authorised to sell packaged, including the following three outlets within the Kwinana City Centre:
  - (a) *Liquorland Kwinana*, located approximately 160 m from the proposed premises in the Kwinana Marketplace shopping centre;
  - (b) the *Admiral Tavern*, which has a drive thru bottle-shop trading under the Thirsty Camel banner, located approximately 120 m from the proposed premises; and
  - (c) a large freestanding *Dan Murphy's* liquor store on the corner of Gilmore and Challenger Avenues, approximately 450 m from the proposed premises.
14. Following an analysis of the difference between the proposed premises and the existing *Dan Murphy's* liquor store, the Applicant submitted that the grant of the licence would enable the packaged liquor facilities within the boundaries of the Kwinana Town Centre to provide consumers with choice, diversity, competition and convenience.
15. In further submissions, the Applicant stated that:
  - (a) it does not automatically follow that the *ALDI Kwinana* will specifically contribute to harm, ill-health or crime statistics, particularly when the release of the 2016 Census data is considered, which the Applicant submitted compared favourably with the 2011 information provided in the PIA and generally showed relative consistency, with even fewer people in some "at risk" categories, i.e. there were fewer young

- people; although the percentage of Aboriginal and Torres Straight Island people had increased by 0.3%; migrants and people from non-English speaking backgrounds have increased in number and some income levels had increased;
- (b) the intervention was based on speculative propositions, almost all of which have no connection to the Applicant or the specifics of its actual liquor store proposal and has not had regard for the fact that hundreds of ALDI liquor stores operate in other parts of the country without the speculated problems occurring; and
  - (c) its prudent management practices and approach to responsible sale, supply and promotion of liquor, which have been proven in the eastern states, will ensure prices are not so low as to encourage irresponsible purchasing or otherwise contribute to problem drinking as speculated by the Intervenor.

### **The representations of the Intervenor**

- 16. The Intervenor made representations regarding the risks of alcohol-related harm specific to the application and on how those risks could be minimised, including concerns about:
  - (a) the relationship between low cost liquor, consumption and increased alcohol-related harm, with ALDI Kwinana intending to provide the public with consistently low-priced alcohol products;
  - (b) local alcohol and other drug treatment services, which indicate concerns regarding ALDI's proposal and the potential impact on clients accessing treatment for their alcohol use;
  - (c) the locality is experiencing levels of disadvantage including, but not limited to, the presence of at-risk groups who currently experience alcohol-related harm, both directly and indirectly; and
  - (d) alcohol-related harm is occurring in the locality of the premises, some of which is higher than the State.
- 17. It was submitted by the Intervenor that even moderate levels of on-going alcohol-related harm or incidents in an area can indicate that one or more structural, environmental and/or community factors exist that support the problems to occur, making the potential for further harm greater if a new variable is introduced, such as a new liquor store.
- 18. The Intervenor also noted the Applicant's own admission that alcohol is proposed to be positioned and sold within the ALDI supermarket in such a way that it is intended to be perceived as a 'true household' grocery item and that the Applicant's attachment to the PIA titled *ALDI Core Stock Range – 2017*, highlights the low cost of the proposed liquor products, with 22 wine varieties listed below \$5 and three varieties priced at \$2.79 per bottle.

19. The Intervenor also submitted that 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 and a de-emphasis of its drug properties<sup>2</sup>, which may then impact on drinking behaviours, such as frequency and volume of consumption, with harm, safety and wellbeing implications. The Intervenor also noted that various bodies of literature<sup>3</sup> have presented research about an increase in alcohol consumption and harm for specific alcohol products when sold from supermarkets.
20. Representations were also made on the impact of product pricing on purchasing behaviour, with the Intervenor noting the Applicant's comments in its PIA that ALDI:
- (a) "prides itself on consistently competitive pricing";
  - (b) has been referred to as the "cheapest supermarket";
  - (c) has been named as the "best value liquor retailer" when compared to other outlets that offer lowest prices guarantees,
- before submitting that there is a relationship between low price, consumption and alcohol-related harm, which makes the Applicant's intention of maintaining liquor products at a consistently low level a harm or ill-health concern.
21. International evidence-based research<sup>4</sup> was also cited by the Intervenor, to demonstrate that the sale of alcohol is price responsive, that is, a reduction in price can result in an increase in consumption and vice versa, before submitting that when low priced liquor products are stocked, customers are more inclined to purchase more liquor than they intended, increasing the likeliness for harm or ill-health occurring to people most at-risk, given they are most likely to be impacted upon in terms of harm and ill-health.
22. As a result, the Intervenor submitted that the addition of low priced liquor within the ALDI Kwinana Supermarket is likely to impact on at-risk persons within the community by further contributing (either directly or indirectly) to levels of alcohol-related harm and problems.
23. In respect of the existing rates of alcohol-related harm in the area, the Intervenor submitted that:
- (a) for the period 1 January 2014 to 31 December 2016, there were 1,239 treatment episodes (counselling and support) for people residing in Kwinana, Postans, Leda, Medina, Orelia, Parmelia, Bertam, Wellard and Calista at treatment services funded by the Mental Health Commission. Of the 1,239 treatment episodes, alcohol was identified as the primary drug of concern in over one in four (25.9%);

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<sup>2</sup> The Intervenor referenced Wylie A, Holibar, F, Jakob-Hoff, M & Casswell, S (1993). A qualitative investigation of responses to the introduction of wine in New Zealand grocery outlets, *Journal of Contemporary Drug Problems*, Spring 1993, p 35

<sup>3</sup> Reference was made to a study by Wagenaar, WC & JD Langley (1995) *Alcohol licensing system changes and alcohol consumption: introduction of wine into New Zealand grocery stores. Addiction, 90(6) p. 776*

<sup>4</sup> Livingston, M., Chikritzhs, T. & Room, R. (2007). Changing the density of alcohol outlets to reduce alcohol-related problems. *Drug and Alcohol Review, 26(5). P. 563.*

(b) according to Western Australian police offence data, for the period of 1 January 2014 and 31 December 2016 there were 1,088 domestic offences recorded in the suburbs of Parmelia, Leda, Wellard, Orelia, Medina, Bertram and Calista, with almost one in four (23.5%) recorded as alcohol-related; and

(c) a breakdown of offences at suburb level revealed that:

(i) the suburb of Parmelia experienced a total of 284 domestic offences, with one in four (23%) being recorded as alcohol-related, with the suburb experiencing higher and increasing rates of alcohol-related domestic disputes per 1,000 persons than the State in 2014, 2015 and 2016 (as shown below);

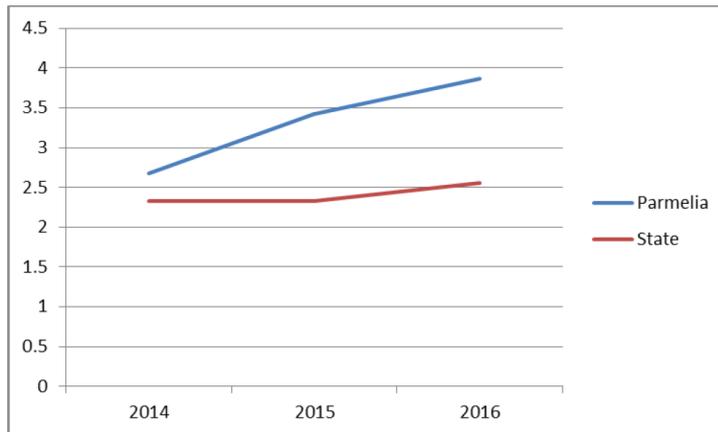


Figure 1: Alcohol-related domestic assault offence rate per 1,000 persons in the suburb of Parmelia, 1 January 2014 to 31 December 2016

(ii) the suburb of Leda experienced a total of 141 domestic assault offences, with over one in four (29.1%, n=41) being recorded as alcohol-related; with the suburb experienced higher and increasing rates of alcohol-related domestic disputes per 1,000 persons than the State in 2015 and 2016 (as shown below);

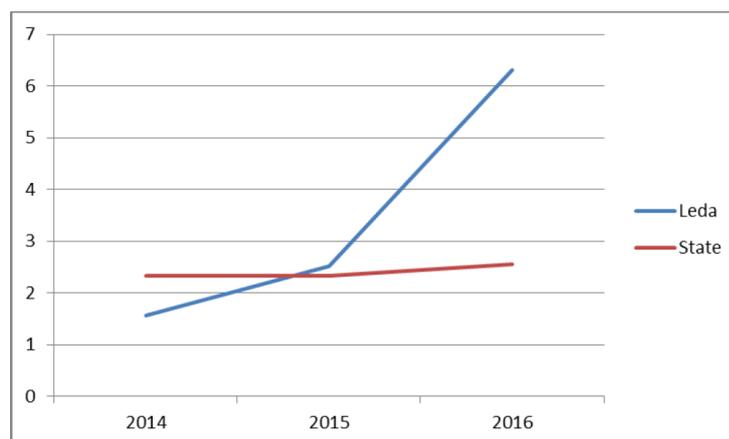


Figure 2: Alcohol-related domestic assault offence rate per 1,000 persons in the suburb of Leda, 1 January 2014 to 31 December 2016

(iii) the suburb of Wellard experienced a total of 140 domestic assault offences, with over one in four (27.1%, n=38) being recorded as alcohol-related; with the suburb also experiencing higher rates of alcohol-related domestic disputes per 1,000 persons than the State in 2016 (as shown below);

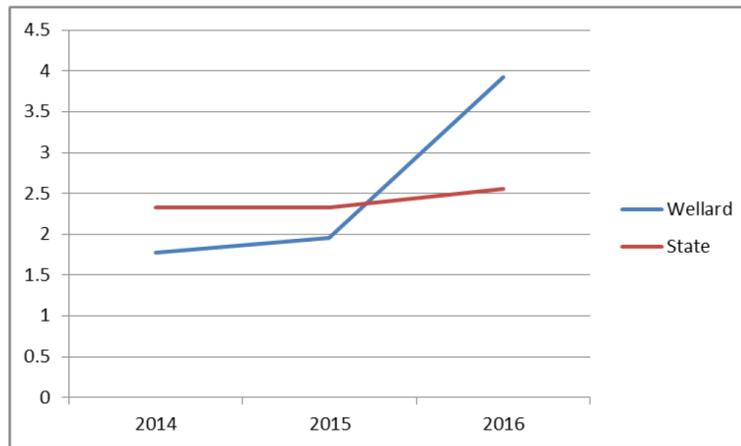


Figure 3: Alcohol-related domestic assault offence rate per 1,000 persons in the suburb of Wellard, 1 January 2014 to 31 December 2016

- (iv) the suburb of Orelia experienced a total of 208 domestic assault offences, with one in five (20.2%, n=42) being recorded as alcohol-related; with the suburb experiencing higher and increasing rates of alcohol-related domestic disputes per 1,000 persons than that of the State in 2014 and 2015;
  - (v) the suburb of Medina experienced a total of 118 domestic assault offences, with approximately one in five (19.5%, n=23) being recorded as alcohol-related and with alcohol-related domestic disputes per 1,000 persons than that of the State in 2014;
  - (vi) the suburb of Bertam experienced a total of 132 domestic assault offences, with one in five (20.5%, n=27) being were recorded as alcohol-related; and
  - (vii) the suburb of Calista experienced a total of 65 domestic assault offences, with over one in four (27.7%, n=18) being recorded as alcohol-related; with the suburb experiencing higher and increasing rates of alcohol-related domestic disputes per 1,000 persons than that of the State in 2014 and 2015.
24. The intervention also included information on other indicators of relative socio-economic disadvantage, such as unemployment rates in the locality, with six of the relevant seven suburbs reporting unemployment rates above the State rate; with the Intervenor submitting that within the cycle of disadvantage<sup>5</sup>, unemployment exacerbates alcohol-related problems and that evidence shows a link between unemployment and poor health and other psychological effects, which are often associated with alcohol and drug use.
25. The Intervenor also suggested that the Applicant had underplayed the level of disadvantage in the Kwinana area, noting that suburbs listed by the Applicant as comprising the locality are represented in the Statistical Area 2s (SA2) of Parmelia-Orelia, Calista and Bertram-Wellard (West) and as can be seen from the table below, populations within the SA2's of Parmelia-Orelia and Calista are identified as being relatively disadvantaged in comparison to other SA2's throughout the State:

<sup>5</sup> According to the Intervenor, the socioeconomic circumstances of communities can influence drinking behaviours and drinking behaviours can, in turn, influence socioeconomic circumstances – it can best be described as a cycle where both factors influence and impact on each other

Statistical Area Level 2	Risking in State (decile)
Parmelia - Orelia	1
Calista	1
Bertram – Wellard (West)	7

26. Evidence of socio-economic disadvantage is further demonstrated when comparing the area in which the liquor store will be trading to the greater Perth region, where the locality of ALDI Kwinana is listed as the most disadvantaged in LGA in the Greater Perth Area, as shown in the following table:

Rank	Local Government Area (LGA)	SEIFA Score
1	Kwinana (T)	963
2	Mandurah (C)	974
3	Belmont (C)	990
4	Armadale (C)	993
5	Bassendean (T)	1,003
6	Gosnells (C)	1,005
7	Rockingham (C)	1,012
8	Swan (C)	1,014
9	Bayswater (C)	1,023
10	Fremantle (C)	1,024

27. In relation to unemployment in the locality, the Intervenor submitted that there is evidence to show a link between unemployment and poor health and other psychological effects, which are often associated with alcohol and drug use.
28. The Intervenor also submitted hospitalisation data to show that residents within some suburbs of the locality are reporting higher rates of some alcohol-related conditions compared to the State, such as:
- alcohol-related hospitalisations in Parmelia-Orelia Statistical Area (SA2) for the period of 1 January 2011 and 30 December 2015, show that for both short term (resulting in acute problems such as violence and injury) and long-term (resulting in chronic disease) conditions caused by harmful drinking patterns are prevalent;
  - overall, the hospitalisation rate for 'all alcohol-related conditions' for residents of the Parmelia-Orelia SA2 was significantly higher (1.19 times) than the corresponding State rate;
  - the hospitalisation rate for chronic alcohol-related conditions for all persons was significantly higher (1.20 times) that of the State rate, with two specific conditions also reporting significantly above that of the State, being other digestive system diseases (2.14 times) and alcoholic liver disease (2.23 times);
  - the acute alcohol-related conditions hospitalisation rate for all persons was also significantly higher than the State rates (1.18 times);
  - for the same period, the total hospitalisation rate for 'all alcohol-related conditions' for male residents of Parmelia-Orelia SA2 was significantly higher than the State rate (1.25 times), which was also the case for total chronic alcohol-related conditions

- (1.28 times), total acute alcohol-related conditions (1.23 times) and other digestive system diseases for male residents (1.45 times); and
- (f) alcohol-related hospitalisation for Calista for the same period, alcohol-related hospitalisations for residents of Calista SA2, demonstrate that male residents of the Calista SA2 had significantly higher rates of total 'alcohol-related conditions' (1.17 times) than the corresponding State rate and significantly higher rates of chronic alcohol-related conditions and other digestive system diseases in comparison with the State (1.31 times and 1.76 times).
29. Further, appended to the notice of intervention was:
- (a) a summary of Treatment Episode Data provided by the Mental Health Commission for the years 2014, 2015, 2016, which showed there were:
- (i) 321 treatment episodes where alcohol was identified as 'the primary drug of concern';
  - (ii) 245 treatment episodes where alcohol was identified as 'another drug of concern'; and
  - (iii) 566 treatment episodes, where alcohol was identified 'a drug of concern';
- (b) information on alcohol-related hospitalisations by condition (12 -17 years) from 2010 to 2014, sourced from the Epidemiology Branch, Department of Health WA, which recorded:
- (i) eight instances of alcoholic psychosis;
  - (ii) three instances of alcoholic dependence;
  - (iii) 578 instances of alcohol abuse;
  - (iv) 15 instances of alcoholic gastritis;
  - (v) one incident of alcoholic liver cirrhosis;
  - (vi) 11 instances of alcohol induced chronic pancreatitis; and
  - (vii) 16 instances of alcoholic poisoning.
30. Also appended to the Intervention was a statement by R. Catterick, Coordinator, South Metro Community Alcohol and Drug Service (SMCADS), which was endorsed by the CEO of the Palmerston Association, a not for profit organisation with the purpose of preventing and reducing the harmful effects of alcohol and other drugs on people, families and the community. Ms Catterick made several observations, including that:
- "In my position as coordinator I am responsible for overseeing the running of the service and the staff. This includes the clinical supervision of volunteers and students and line management staff. I also have a client case load working with approximately four clients per day. This enables me to get a clear view from both counsellors and clients of the issues faced in our catchment area.
- ...The catchment area of SMCADS in Rockingham includes the Kwinana area and surrounds. I am aware that the suburbs of Kwinana Town Centre, Leda, Medina, Orelia, Parmelia, Bertram, Wellard, and Calista have been

identified by the applicant as potentially being affected by the grant of the ALDI application. I confirm that clients from these suburbs work with our SMCADS team.

...It is my professional experience from one on one client support, and clinical reviews of the SMCADS counselling team, that alcohol related issues are a key concern for clients coming from the Kwinana area and surrounds, with the majority of clients reporting packaged liquor as their main type of alcohol consumption, as opposed to on-premises drinking.”

31. Ms Catterick, who holds a Bachelor of Counseling Degree, also expressed her professional experience that SMCADS clients report many issues associated with their alcohol consumption, including:
  - (a) social isolation and stigma and low self-esteem;
  - (b) not eating regularly and poor nutrition for the drinker and their family;
  - (c) physical and verbal domestic violence and chaos in the family home environment;
  - (d) aggression such as fighting and stabbing;
  - (e) crime such as stealing;
  - (f) organ damage; mental illness; higher risk of suicide and compromised choices; and
  - (g) self-medication and the use of alcohol to regulate emotions.
32. Ms Catterick’s statement also recounted how counsellors often suggest a strategy for clients to avoid environments where liquor is readily available, sold or supplied and to complete their grocery shopping where they will not be exposed to the sale of packaged liquor, which may be compromised by ALDI Kwinana operating during the same trading hours as the supermarket, given that clients would be exposed to alcohol in the supermarket environment at a time when such a trigger would not otherwise be available.
33. Accordingly, the Intervenor submitted that the substantial risks referred to by R. Catterick are relevant for consideration in the context of an application that seeks to integrate low-cost liquor products into a supermarket setting and locate the liquor/display area adjacent to checkouts where grocery products can be purchased.
34. In further submissions, the Intervenor made representations that:
  - (a) the intervention displayed alcohol-related domestic assault rates by suburb for the locality and compared these rates to the State rate, which showed some suburbs rate higher than the State;
  - (b) existing alcohol-related domestic assault rates in the locality warrant consideration in context of the proposal by *ALDI Kwinana* to sell packaged liquor at very low prices in a community already experiencing a level of alcohol-related harm;
  - (c) the hospitalisation data presented in the intervention is more recent than those relied upon by the Applicant and pertains to a more relevant area than presented within the Applicant’s PIA; and

- (d) by rejecting the more up to date 2011 to 2015 data, the Applicant clearly seeks to misrepresent the situation by suggesting preference should be given to outdated data that may be interpreted as being more advantageous to their cause, before submitting that hospitalisation data presented in the intervention.

### Legislative and legal framework

35. In *Woolworths Ltd v Director of Liquor Licensing*<sup>6</sup> His Honour Buss JA set out the statutory framework for a determination of an application, namely:
- (a) by section 38(2) of the Act, an applicant has to satisfy the licensing authority that the granting of an application is in the public interest;
  - (b) the expression 'in the public interest', when used in a statute, imports a discretionary value judgment<sup>7</sup>;
  - (c) the factual matters which the licensing authority is bound to take into account, in determining whether it is satisfied that the granting of the application is in the public interest are those relevant to the objects of the Act, as set out in s 5(2) of the Act;
  - (d) the factual matters which the licensing authority is entitled to take into account, in determining whether it is satisfied that the granting of an application is in the public interest are those set out in s 38(4) of the Act;
  - (e) s 5(2) is mandatory whereas section 38(4) is permissive; and
  - (f) on the proper construction of the Act (in particular, ss 5(1), 5(2), 16(1), 16(7), 30A(1), 33 and 38(2)), the licensing authority is obliged to take into account the public interest in:
    - (i) catering for the requirements of consumers for liquor and related services with regard to the proper development of the liquor industry in the State; and
    - (ii) facilitating the use and development of licensed facilities so as to reflect the diversity of the requirements of consumers in the State.
36. The primary objects of the Act are:
- (a) to regulate the sale, supply and consumption of liquor;
  - (b) to minimise harm caused to people, or any group of people, due to the use of liquor; and
  - (c) 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.

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<sup>6</sup> [2013] WASCA 227

<sup>7</sup> *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210, 216 (Mason CJ, Brennan, Dawson & Gaudron JJ). If the statute provides no positive indication of the considerations by reference to which a decision is to be made, a general discretion by reference to the criterion of 'the public interest' will ordinarily be confined only by the scope and purposes of the statute

37. The secondary objects of the Act are:
- (a) 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;
  - (b) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - (c) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of the Act.
38. Each application must be considered on its merits and determined on the balance of probabilities pursuant to s 16 of the Act. Section 16 further provides for the licensing authority to act according to equity, good conscience and the substantial merits of the case; without undue formality and is not bound by the rules of evidence.
39. When tension arises between advancing the objects of the Act, particularly the objects of minimising alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services, the licensing authority needs to weigh and balance those competing interests.<sup>8</sup>
40. While there is a positive onus on an applicant to discharge its obligation under s 38(2) of the Act<sup>9</sup>, an intervenor carries no onus to establish their assertions of fact or opinion, but rather provides representations to assist the licensing authority to make an informed decision.<sup>10</sup>
41. In determining whether the grant of an application is 'in the public interest', the licensing authority is required to exercise a discretionary value judgment confined only by the scope and purpose of the Act<sup>11</sup>. Further, s 33(1) provides that licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that it considers in the public interest.

### Determination

42. Having regard to all the material submitted in support of the application and submissions made on behalf of the Applicant, it is apparent that the primary basis upon which the Applicant has contended the application should be granted is that it will allow a one-stop shopping experience for those persons who attend the ALDI supermarket to purchase their groceries and provide consumers in Kwinana with choice, diversity competition and convenience.
43. In *Woolworths Ltd v Director of Liquor Licensing*<sup>512</sup> Buss JA stated that that it is a "...notorious fact that, in contemporary Australian life, one-stop shopping in large

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<sup>8</sup> Refer *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258

<sup>9</sup> Refer *Liquorland (Australia) Pty Ltd v Executive Director of Health* [2013] WASC 51; *Seoul Mart City Pty Ltd v Commissioner of Police* (LC27/2014)

<sup>10</sup> see Greaves J, *Re Gull Liquor* (1999) 20 SR (WA) 321

<sup>11</sup> 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

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.”

44. Consistent with this notorious fact, after considering the Applicant’s evidence and submissions, including the Patterson survey which shows that many people living in the locality will shop at the ALDI Kwinana on a regular basis, I find that the grant of the application would cater to the requirements of consumers for liquor and related services in accordance with object 5(1)(c) of the Act.
45. Further, while I recognise that one-stop shopping is a factor to be taken into account in the consideration of an application; there may be other factors that are given greater weight in the determination of an application of this nature. In this regard, the Intervenor has introduced evidence into these proceedings that there is harm and ill-health occurring in the Kwinana locality, due to the use of liquor and that there are a number of at-risk groups that need to be considered in determining this application.
46. In respect of the locality surrounding the proposed liquor store, the evidence of the Intervenor establishes that:
  - (a) the City of Kwinana has the lowest SEIFA score in metropolitan Perth (963), indicating a degree of disadvantage;
  - (b) unemployment is higher than the State rate;
  - (c) medium weekly incomes are lower than the State rate;
  - (d) residents experienced significantly higher rates of alcohol-related hospitalisation than the State average;
  - (e) alcohol-related domestic assaults are higher than the State per 1,000 persons in the suburbs of Wellard, Medina, Bertram, Parmelia, Leda, Orelia, and Calista and have been trending upwards in Parmelia, Leda, Orelia, and Calista (refer to the information provided at pages 5 to 7).
47. In response to the representations of the Intervenor, the Applicant submitted that:
  - (a) although the sale and supply of liquor has the potential to cause some risks, the nature of its proposal presents only very low risks;
  - (b) the intervention is based on some highly speculative propositions, almost all of which have no connection to the Applicant or the specifics of its actual liquor store proposal;
  - (c) the Intervenor has not had regard to the importance of choice and diversity that the liquor store will provide, the valuable one-stop shopping convenience associated with it and the low risk features of the liquor store model;
  - (d) it does not automatically follow that people who:
    - (i) choose to, or need to because of limited finances, purchase lower priced liquor products will consume that liquor irresponsibly and the public

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<sup>12</sup> [2013] WASCA 227

requirement for competitively priced liquor does not equate to an intention to either purchase or consume liquor irresponsibly;

- (ii) purchase lower priced liquor products drink the liquor in greater quantity; and
- (e) the intervention is not supported by the evidence as to the Applicant’s experience in the eastern states in relation to ALDI’s 260 plus liquor stores and ALDI’s good regulatory record.

48. Notwithstanding the Applicant’s submissions, I find that the weight of the evidence confirms that there is a significant level of alcohol-related harm in the relevant locality. Further, I find that the premises is located in very close proximity to areas of disadvantage, which is clearly illustrated in the following map, taken from the report prepared by Deep End Services<sup>13</sup>, which shows the primary trade area for the proposed premises and the premises bounded on three sides by areas of disadvantage (i.e. the suburbs of Calista, Medina and Orelia), which each score less than 900 on the SEIFA index.

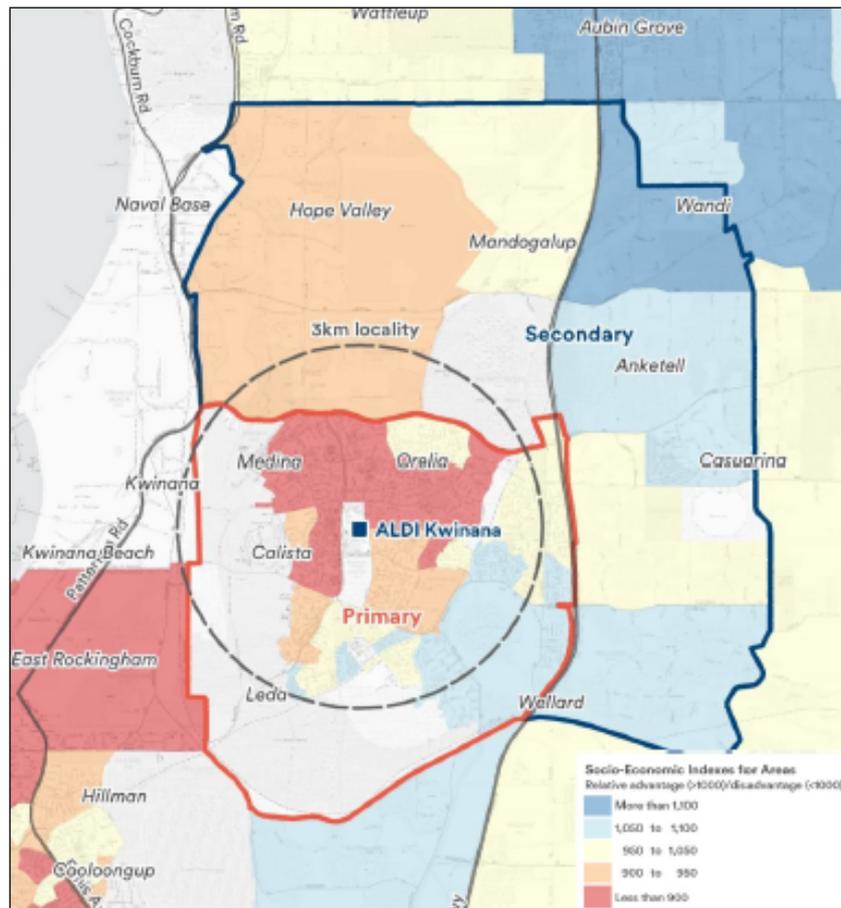


Figure 4: SEIFA at small area level

49. In this regard, the report by Deep End Services observed that:

“The map has areas shaded red across the older parts of Kwinana with SEIFA scores of between 830 and 900. These would generally be classified as areas of disadvantage. The new growth areas to the south and east have

<sup>13</sup> Referenced in the report as Figure 14 – “SEIFA at small area level”

substantially higher SEIFA scores which are typical of most new areas of housing.”

50. Despite the new growth areas to the south and east of the premises, I am satisfied that the Applicant’s own evidence establishes that the premises is more closely aligned with areas of disadvantage.
51. Where harm and ill-health is a relevant factor in the consideration of an application, the approach that I must adopt was outlined by His Honour Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*.<sup>14</sup> Based on that decision, I am required to:
- (a) make findings that specifically identify the existing level of harm and ill-health in the relevant area due to the use of liquor;
  - (b) make findings about the likely degree of harm to result from the grant of the application;
  - (c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
  - (d) weigh the likely degree of harm, so assessed, together with any relevant factors to determine whether the applicant has satisfied the Commission that it is in the public interest to grant the licence.
52. Therefore, in the context of this application, I find that there is a high level of pre-existing harm and ill-health in Kwinana due to the use of liquor, based on a consideration of the following evidence:
- (a) statistical data in respect to alcohol-related offences in Kwinana, which show an upward trend, particularly in rates of alcohol-related domestic violence;
  - (b) alcohol-related hospitalisations in Kwinana;
  - (c) the anecdotal evidence of the Coordinator, South Metro Community Alcohol and Drug Service (SMCADS), which was attached to the intervention; and
  - (d) other evidence of disadvantage in the locality.
53. While the Applicant has attempted to explain:
- (a) the levels of alcohol-related harm occurring in the locality by referencing a newspaper article to suggest that there has reportedly been an “explosion” in family and domestic violence across WA in 2017 driven by a toxic combination of soaring meth addiction and the end of the mining boom and not packaged liquor; and
  - (b) the level of disadvantage in the locality, such as higher levels of unemployment, by suggesting that that major infrastructure projects by the City of Kwinana are likely to provide significant employment to residents,

I have given this information little weight, preferring instead to accept the research cited by the Intervenor, which demonstrates a clear link between price, availability and resultant alcohol-related harm in the community.

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<sup>14</sup> [2015] WASC 208

54. In arriving at this view, I am aware that research evidence must be considered with regard to the proven circumstances of the particular locality in which the licensed premises is to operate, as stated by Wheeler J in *Executive Director of Public Health v Lily Creek International & Ors*<sup>15</sup> and Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor*<sup>16</sup> (having quoted Wheeler J in *Lily Creek*):

“...by its very nature, much evidence about harm minimisation will be general and expert in nature. It may be epidemiological or sociological, to name just two of the different disciplines which may be involved. It will not necessarily be evidence relating directly to the particular premises, neighbourhood or locality concerned. It may nonetheless be relevant and admissible, for it may, depending on the circumstance, assist in determining the likelihood that harm is occurring or will occur, the nature of that harm and what contribution can be made to minimising it. Such evidence may be especially important where it is connected by other evidence with the ‘particular local, social, demographic and geographic circumstances’ of the given case.”

55. According to the Applicant’s PIA, it maintains prices are at a consistently low level. Therefore, the grant of the application will see the introduction of low priced packaged liquor into a locality already experiencing elevated rates of alcohol-related harm and may potentially result in the lowering of prices by licensees.

56. As a specialist Tribunal, the licensing authority is entitled to:

- (a) draw an inference that there is a likelihood that such a scenario may occur, particularly where the granting of the licence would result in four retailers selling packaged liquor within a short distance of each other<sup>17</sup>; and
- (b) exercise some level of expertise and in this regard, I note that in proceedings relating to the grant of a liquor store licence in respect of *ALDI Cloverdale*, the Director’s delegate referred to the findings made by the Independent Liquor and Gaming Authority of New South Wales, particularly noting that not all of ALDI’s applications to sell packaged liquor in NSW have been approved, with some applications being refused because of concerns about the likely negative impacts upon the local community.

57. Further, to provide context around the relevant decision of the Independent Liquor and Gaming Authority of New South Wales in which ALDI’s good regulatory record was recognised, the Delegate also observed that the comment was made while refusing an application for *ALDI Lake Haven* because despite finding the ALDI Group has a good regulatory record and accepting its well-developed internal business policies “the Applicant’s staff will only have the meaningful capacity to monitor the point of sale and its immediate environs, and the measures disclosed in the material before the Authority do not overcome the prevailing sensitivity of the location and surrounding area to alcohol related impacts on public amenity.”

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<sup>15</sup> [2001] WASCA 410

<sup>16</sup> [2011] VSC 207

<sup>17</sup> Refer *Woolworths Ltd v Executive Director of Public Health and Others* (LC 02/2017)

58. The harm contemplated by the Act is not confined to consumers of alcohol and extends to harm caused to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm. This includes harm which may occur through an increase in anti-social or injurious behaviour due to the use of liquor and is not limited to physical harm.<sup>18</sup>
59. Whether harm or ill-health will, in fact, be caused to people, or any group of people, due to the use of liquor is essentially a matter of prediction. However, it is unnecessary to establish on the balance of probabilities that harm or ill-health will be caused to people, or any group of people, before that consideration can be taken into account. The potential for harm or ill-health is to be considered by the licensing authority, irrespective of whether the prospect is a possibility or a probability. It is a powerful public interest consideration.<sup>19</sup>
60. In *Executive Director of Health v Lily Creek International Pty Ltd & Others*<sup>20</sup> Ipp J stated that, 'whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to in *Malec v JC Hutton Pty Ltd*, is essentially a matter of prediction. The licensing authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.'<sup>21</sup>
61. Further, as noted by the Liquor Commission<sup>22</sup>, the licensing authority is entitled to draw inferences from evidence and notorious facts. In this instance, the academic literature in respect to the effects of outlet density, anecdotal evidence of the Coordinator SMCADS and the increase in competition that would result in the granting of the licence are a sufficient basis to draw a logical conclusion that there is a significant likelihood that the granting of the licence will result in an increase in harm and ill-health to those who use liquor in a community where there is already a significant level of such harm and ill-health.
62. Therefore, when I consider all the information before me, I have concluded that it is highly likely, on the balance of probability, that the grant of the application will, in due course, contribute to the high rate of alcohol-related harm that presently exists in the locality. I do not share the view of the Applicant that the low risk features of its proposal will sufficiently mitigate the potential risks to this community, given that the harm caused by packaged liquor occurs away from the licensed premises and in circumstances beyond the Applicant's control.
63. In relation to some of the concerns expressed by the Coordinator SMCADS, particularly relating to the strategy for clients to avoid environments where liquor is sold, I note the Applicant's submissions that:
- (a) the liquor area proposed will be connected with the *ALDI Kwinana* supermarket to provide customers with considerable convenience to buy take-away liquor to complement food purchased in the supermarket for meals or to otherwise

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<sup>18</sup> *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321 and *Kordister supra*

<sup>19</sup> Refer *Lily Creek, supra*

<sup>20</sup> (2000) 22 WAR 510

<sup>21</sup> *Lily Creek, supra*

<sup>22</sup> Refer *Woolworths Ltd v Executive Director of Public Health and Others* (LC 02/2017)

- conveniently buy packaged liquor for regular household use, with customers being able to take their trolley into the licensed area if they wish;
- (b) access to the liquor area is deliberately situated near the checkouts to encourage and direct customers through the supermarket proper before accessing the liquor area, which is separate from where customers enter; and
  - (c) the liquor area is situated at the end of the walking route that will be undertaken by most ALDI customers through the supermarket, near the exit,

and therefore have some difficulty accepting the Applicant's alternative scenario, where it contended that liquor will be readily accessible to customers who wish to buy packaged liquor, but equally easily avoided for any customer who may not want to be exposed to liquor.

64. In determining what weight to give to the competing interests in this case, I consider that the following factors are also relevant:
- (a) the one-stop shopping requirements of consumers at the *Kwinana City Centre* including ALDI customers are presently being catered to by existing licensed premises (i.e. *Dan Murphy's Kwinana* and *Liquorland Kwinana*)<sup>23</sup>;
  - (b) the *Admiral Tavern*, which has a drive through facility, is also nearby and these three outlets (i.e. *Dan Murphy's Kwinana*, *Liquorland Kwinana* and the *Admiral Tavern*), together with the other packaged liquor outlets in the locality, already provide consumers with choice and competition; and
  - (c) the overall benefit offered by the proposal to consumers in the locality is reduced by the Applicant's intention to provide some mainstream liquor products in addition to its exclusive range.
65. The Applicant also lead evidence regarding the findings of the Liquor Commission in *ALDI Harrisdale*, particularly where the Commission noted the concerns of the Intervenor regarding the integration of alcohol and grocery items but was of the view that those concerns could be mitigated through the imposition of appropriate conditions on the licence. In my view, however, I cannot reach the same conclusion given that
- (a) the Liquor Commission found that the existing levels of harm and ill-health in the Harrisdale locality were no higher than other areas of the State; and.
  - (b) the facts and circumstances of this case are sufficiently different, with the evidence establishing that the locality surrounding *ALDI Kwinana* experiences disadvantage with at-risk persons requiring alcohol and drug treatment services, high rates of alcohol-related domestic assaults which are trending upwards, together with other alcohol-related anti-social behaviour and harm.
66. Consistent with the observations of Edelman J in *Liquorland (Australia) v Executive Director of Public Health*<sup>24</sup>, I note that in circumstances where there is already a high level

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<sup>23</sup> Refer *Woolworths Ltd -v- Director of Liquor Licensing* [2013] WASC 227, where Buss JA found that the proposed Dan Murphy's store, which would be located in an existing stand-alone vacant building on the western side of the shopping centre would provide for one-stop shopping for patrons of the Melville Plaza Shopping Centre

of alcohol-related harm in the community, even the smallest risk of a further increase in harm may be considered unacceptable:

“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.”

67. Therefore, having regard to the totality of the evidence, I am not satisfied on balance that the Applicant has discharged the onus prescribed by s 38(2) of the Act that the granting of the licence is in the public interest. The benefits of one-stop shopping and an increase in the availability of liquor products are outweighed by the likelihood of an increase in harm and ill-health due to the use of liquor if the application were granted.
68. Accordingly, the application is refused.
69. 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.
70. This matter has been determined by me under delegation pursuant to s 15 of the Act.

  
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING