

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

**APPLICANT:** ALDI FOODS PTY LIMITED

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

**PREMISES:** ALDI BUSSELTON LIQUOR STORE

**PREMISES ADDRESS:** BUSSELTON POWER CENTRE, LOT 17, 80 WEST STREET  
BUSSELTON

**APPLICATION ID:** A000223365

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

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

**DATE OF DETERMINATION:** 27 NOVEMBER 2017

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### **Introduction**

- 1 ALDI Foods Pty Ltd (the applicant) has lodged an application for the conditional grant of a liquor store licence for premises to be located at the Busselton Power Centre, 80 West Street, Busselton and known as ALDI Busselton Liquor Store. 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. There were no objections to the grant of the application, however the Chief Health Officer (CHO) lodged a notice of intervention in accordance with s 69 of the Act.
- 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>

### **Determination**

- 4 The applicant proposes to operate a small liquor store as part of a new ALDI supermarket which is being established in Busselton. The proposed liquor store will be typical of the ALDI liquor store model and will have the following features:
  - 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.

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

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- 5 The applicant submitted a detailed Public Interest Assessment (PIA) to support its application and demonstrate that the grant of the application was in the public interest. 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. This survey indicated strong support for the grant of the application.
- 6 The CHO intervened in the application to make representations regarding the risks of alcohol-related harm specific to the application, and how those risks could be minimised.
- 7 Submissions were made by the CHO 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;
  - there is a relationship between low cost liquor, consumption and increased alcohol-related harm, and ALDI Busselton intends to provide the public with consistently low-priced alcohol products; and
  - there are at-risk groups within Busselton and the surrounding suburbs who currently experience alcohol-related harm.
- 8 In respect of the existing rates of alcohol-related harm in the area, the CHO submitted that for the period 1 January 2014 to 31 December 2016, there were 542 treatment episodes (counselling and support) for people residing in Busselton and surrounding suburbs at treatment services funded by the Mental Health Commission. Of the 542 treatment episodes, alcohol was identified as the primary drug of concern in over one in four (29.2%).
- 9 It was therefore submitted by the CHO that if the application is granted, conditions which separate the alcohol from the general grocery items and shopping areas would be an important harm minimisation approach.
- 10 The onus falls upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest.<sup>2</sup> In determining whether the grant of the application is 'in the public interest', the factual matters which I am bound to consider are those relevant to the primary and secondary objects of the Act, as set out in s 5.<sup>3</sup>
- 11 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;

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

<sup>3</sup> *Woolworths v Director of Liquor Licensing* [2013] WASCA 227.

- 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.

12 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.

13 In considering the evidence presented in the context of the objects of the Act, I find that the grant of the application would promote objects 5(1)(c) and 5(2)(a) of the Act. In respect of the harm minimisation object of the Act, the locality surrounding the proposed liquor store would appear to be typical of most suburbs and therefore I am of the view that the grant of the application would not unduly contribute to the existing rate of alcohol-related harm in the area. The locality surrounding the proposed liquor store has a positive socio-economic status, with the City of Busselton having a SEIFA<sup>4</sup> decile of 8 of 10, reflecting an above average Australian local government municipality.

14 In LC 09/2017 (ALDI Harrisdale), the Liquor Commission noted the concerns raised by the CHO about the integration of alcohol and grocery items and imposed a condition on the licence requiring the separation of the liquor area from the food/grocery area by a barricading of non-see-through material over two metres in height. This provides a degree of separation between the licensed area and the remainder of the supermarket.

15 Having considered the evidence presented, I am satisfied that the applicant has discharged its onus under s 38(2) and demonstrated that the grant of the application is in the public interest. 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 1995, Health (Miscellaneous Provisions) 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

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<sup>4</sup> Index of Relative Socio-economic Advantage and Disadvantage.

- 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 **3 December 2018** (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.
- 16 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. In this respect, only liquor stores located in the metropolitan area are permitted to trade on Sundays.

#### 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.

#### 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.

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

- 19 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.
- 20 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