

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LIMITED

OTHER PARTIES: CHIEF HEALTH OFFICER (INTERVENOR)

PREMISES: ALDI CURRAMBINE

PREMISES ADDRESS: 86 DELAMERE AVENUE CURRAMBINE

APPLICATION ID: A000250065

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 27 FEBRUARY 2018

Introduction

- 1 An application was lodged by ALDI Foods Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be known as ALDI Currumbine and located at 86 Delamere Avenue, Currumbine. The application was 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.¹

Determination

- 4 The applicant seeks to establish a small packaged liquor outlet as part of a stand-alone supermarket at the Currumbine Central Shopping Centre. The proposed liquor store will be the same as other outlets that the applicant has established at its various supermarkets across the metropolitan area and in some regional centres. The proposed liquor store will have the following key features:
 - there will be a small browse/display area of about 21m², together with a single licensed checkout;
 - there will be about 95 non-refrigerated liquor products on offer; and

¹ Refer s 16(7) of the Act.

- some of the liquor products will be unique to the applicant.
- 6 The applicant submitted a Public Interest Assessment (PIA) in accordance with the relevant policy of the Director. Pursuant to s 38 of the Act, an applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest. The public interest provision enables the licensing authority to consider a broad range of issues specific to each application, which must be considered on its merits, based upon the evidence submitted by an applicant in its PIA.
- 7 In this regard, the applicant's 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 (the Patterson Report), who conducted a survey of consumer requirements for liquor retailing in the locality of the proposed liquor store; and
 - a report from Deep End Services, which provided data relevant to the surrounding locality, including demographic and economic data; the likely trade area for the proposed liquor store and commentary and analysis on the site of the premises.
- 7 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.
- 8 Submissions were made by the CHO on the following matters:
- ALDI Currambine intends to provide the public with consistently low-priced alcohol products from within its supermarket;
 - 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.
- 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.
- 11 As stated earlier, the onus falls upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest.² 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 5.³
- 12 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;

² Refer s 38(2) of the Act.

³ *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.

13 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.

14 Based upon the evidence submitted by the applicant, I make the following findings:

- there is good public support for the grant of the application as evidenced by the data from the Patterson Report. Seventy-Seven per cent of respondents who have purchased packaged liquor indicated that they would be likely to use the proposed liquor store when shopping at the supermarket;
- the grant of the application would promote objects 5(1)(c) and 5(2)(a) of the Act;
- the locality surrounding the proposed liquor store is relatively affluent. Except for Heathridge, the surrounding suburbs all have high SEIFA⁴ ratings, which indicates that the locality is not socio-economically disadvantaged;
- the overall rate of alcohol-related hospitalisations in the locality is significantly lower than the corresponding State rate;
- existing rates of alcohol-related harm in the locality is not above what is commonly accepted in the community; and
- the grant of the application is unlikely to cause undue harm to people, or any group of people, within the community due to the use of liquor. Therefore, the grant of the application is not inconsistent with the harm minimisation object of the Act.

15 I am also mindful of the decision of the Liquor Commission in ALDI Harrisdale (LC 09/2017) in which the 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.

16 Therefore, 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

⁴ Socio-economic Index for Areas

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 14 July 2017;
 - (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 **26 February 2019** (12 months from the date of the decision) pursuant to s 62(4)(c) of the Act.
- 17 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

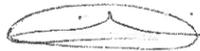
Pursuant to section 100(2a) of the Act, section 100 of the Act is modified so that an approved manager must be present within the ALDI supermarket store whenever business is conducted under the licence.

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.

- 18 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 19 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 20 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.
- 21 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