

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LIMITED

OTHER PARTIES: COLIN IRWIN (OBJECTOR)
CHIEF HEALTH OFFICER (INTERVENOR)

PREMISES: ALDI DOG SWAMP

PREMISES ADDRESS: DOG SWAMP SHOPPING CENTRE 6 WANNEROO ROAD
YOKINE

APPLICATION ID: A000251021

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR
STORE LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 12 APRIL 2018

Introduction

- 1 This is an application by ALDI Foods Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be located at the Dog Swamp Shopping Centre, 6 Wanneroo Road, Yokine and to be known as ALDI Dog Swamp. 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. An objection to the application was lodged by Mr Colin Irwin (the objector) while the Chief Health Officer (CHO) lodged a notice of intervention, as permitted under 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.¹

Determination

- 4 The applicant seeks to establish a small liquor store as part of its supermarket within the Dog Swamp Shopping Centre. The applicant has a standard business model for its liquor stores which is well known to this authority through various similar applications and need not be repeated in any great detail here, save to note the following key features;
 - there will be a small browse/display area of about 21m², together with a single licensed checkout;

¹ Refer s 16(7) of the Act.

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- there will be about 95 non-refrigerated liquor products on offer; and
 - some of the liquor products will be unique to the applicant.
- 5 To support its application, the applicant lodged the following documents:
- a detailed Public Interest Assessment (PIA);
 - a Survey of Consumers Requirements prepared by Patterson Research Group;
 - a Locality Report prepared by Deep End Services;
 - a Parking Assessment Report for the Dog Swamp Shopping Centre prepared by Cardno; and
 - a Transport Impact Assessment prepared by Transcore.
- 6 It was submitted by the applicant that the grant of the application will cater to the diverse requirements of consumers in the locality and provide a convenience of retail liquor services in a modern, growing and developing area.
- 7 The objector submitted that the grant of the application was not in the public interest because there are already 11 outlets in the surrounding locality that sell packaged liquor and the grant of the application will not add any value to what consumers already experience in the area.
- 8 The CHO intervened in the application to make representations that:
- ALDI Dog Swamp 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;
 - there is a relationship between low cost liquor, consumption and increased alcohol-related harm; and
 - 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.
- 9 Pursuant to s 38(2) of the Act, the applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest. 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 5.²
- 10 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

² *Woolworths v Director of Liquor Licensing* [2013] WASCA 227.

- 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.
- 11 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.
- 12 The evidence indicates that the locality surrounding the proposed liquor store is not disadvantaged and the overall rate of alcohol-related hospitalisations in the south eastern statistical local area within the City of Stirling is similar to the corresponding State rate while the City of Vincent is significantly higher than the corresponding State rate. However, when all factors relevant to this application are taken into consideration, I am satisfied that the grant of the application is unlikely to cause undue harm to people, or any group of people due to the use of liquor.
- 13 There is good support from the local community for the grant of the application as evidenced by the Patterson Report and I find that the grant of the application would promote objects 5(1)(c) and 5(2)(a) of the Act.
- 14 The burden of establishing the validity of any objections lies on the objector.³ The objector is an existing licensee in the area and the objection would appear to be predicated on protecting the licensee's existing market share. I find that the ground of objection has not been made out.
- 15 The matters raised by the CHO were considered by the Liquor Commission in ALDI Harrisdale⁴ and the Commission was satisfied that it was appropriate to impose conditions on the licence which separate the food/grocery area of the supermarket from the liquor store by a barricading of non-see-through material over two metres in height.
- 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 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;

³ Refer s 73(10) of the Act.

⁴ LC 09/2017.

- (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 22 November 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 **11 April 2019** 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