

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

**APPLICANT:** ALDI FOODS PTY LIMITED

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

**PREMISES:** ALDI ELLENBROOK LIQUOR STORE

**PREMISES ADDRESS:** CNR PINASTER PARADE AND THE PROMENADE  
ELLENBROOK

**APPLICATION ID:** A000236795

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

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

**DATE OF DETERMINATION:** 21 FEBRUARY 2018

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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 known as Aldi Ellenbrook Liquor Store and located at the corner of Pinaster Parade and The Promenade, Ellenbrook. 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 In 2016, ALDI opened an Ellenbrook supermarket, which services both the local and wider community. The ALDI Ellenbrook supermarket is a stand-alone store which is part of the commercial and retail precinct within the developing Ellenbrook Central Shopping Centre.
- 5 By this application, the applicant seeks to establish a small liquor store as part of its Ellenbrook supermarket. The proposed liquor store will be typical of the ALDI liquor store model and will have the following features:

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

- there will be a small browse/display area of about 21m<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 To demonstrate that the grant of the application was in the public interest, the applicant submitted a detailed Public Interest Assessment (PIA). 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 adult residents within the locality.
- 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:
- the association of the sale of packaged liquor within the supermarket setting 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 the ALDI Ellenbrook Liquor Store intends to provide the public with consistently low-priced alcohol products; and
  - local alcohol and other drug treatment service providers raise concerns regarding ALDI's proposal and the potential impact on clients accessing treatment for their alcohol use.
- 9 It was submitted by the CHO that between 1 January 2014 and 31 December 2016, there were 768 domestic assault offences recorded in the suburbs of Ellenbrook, Aveley and Henley Brook, of which 19.4% (149) were recorded as alcohol-related. The CHO also reported that there is a visual presence of some people within the proximity of the Ellenbrook Central Shopping Centre whom are intoxicated and/or have been observed street drinking.
- 10 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 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>

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

12 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.

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 The applicant's evidence indicates that the socio-economic standing of the locality is comparable with the State average. Of note is the fact that the locality records a higher level of full-time employment, lower level of unemployment and higher incomes at a personal, family and household level than the State average.

15 The SEIFA<sup>4</sup> ratings also provide a relevant indicator of social wellbeing. In this regard, the City of Swan scores a SEIFA decile of 8 out of 10 and the suburb of Ellenbrook has decile of 7 out of 10. This indicates that the locality is in a relatively positive state of socio-economic health.

16 The factual inquiry is directed to promoting the objects of the Act and ultimately determining whether the grant of the application is in the public interest. In this regard, when I consider the evidence presented in this application, I find that the grant of the application would promote objects 5(1)(c) and 5(2)(a) of the Act. The report prepared by Patterson Research Group indicates that the existing ALDI supermarket is popular with residents and 74% of respondents to the survey who purchase package liquor indicated they would use the proposed liquor store.

17 In respect of the harm minimisation object of the Act, although this is some pre-existing alcohol-related harm in the locality surrounding the proposed liquor store I do not believe that the grant of the application will unduly contribute to this harm. The socio-economic data indicates that the locality surrounding the proposed liquor store is not disadvantaged and the City of Swan records lower rates of alcohol-related hospitalisations and deaths than the corresponding State average.

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

<sup>4</sup> Socio-economic index for Areas.

- 18 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.
- 19 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;
  - (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 20 February 2019 pursuant to s 62(4)(c) of the Act.
- 20 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