

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LTD

PREMISES: ALDI JOONDALUP LIQUOR STORE

PREMISES ADDRESS: LAKESIDE JOONDALUP SHOPPING CENTRE, 420 JOONDALUP DRIVE, JOONDALUP

APPLICATION ID: A000191943

NATURE OF APPLICATION: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 10 OCTOBER 2016

Introduction

- 1 ALDI Foods Pty Ltd (“ALDI” or “the applicant”) seeks a conditional grant of a liquor store licence for premises to be known as ALDI Joondalup Liquor Store and located at the Lakeside Joondalup Shopping Centre (the Centre), 420 Joondalup Drive, Joondalup. 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. Objections to the grant of the application were lodged by Ms Julia Stafford on behalf of the McCusker Centre for Action on Alcohol and Youth (MCAAY) and Mostfun Enterprises Pty Ltd (Mostfun), the licensee of IGA Joondalup Liquor. The Executive Director Public Health (EDPH) lodged a notice of intervention.
- 3 In accordance with the provisions of ss 13 and 16 of the Act, the application will be determined on the written material lodged by the parties.

Overview of the evidence and submissions of the parties

The applicant

- 4 ALDI proposes to establish a supermarket with a liquor store at the Centre to supplement its supermarket services with a take-away liquor service so as to create one-stop shopping convenience for its customers.
- 5 The purposed liquor store, located at the front of the supermarket, will incorporate a browse/display area of approximately 24m² together with a licensed checkout. Approximately 95 non-refrigerated liquor items will be available to the public, which will include some exclusive ALDI products.
- 6 The applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided information on the applicant’s proposed manner of trade, details of the locality surrounding the proposed liquor store, the social health indicators for the

area, likely impact on the amenity of the neighbourhood, security and crime prevention initiatives and the low risk features of the application.

- 7 The applicant engaged Patterson Research Group to conduct a survey of adult residents in the area to gauge the level of support for the application. A total of 300 survey responses were collected by means of a hybrid research design, combining online self-completion and telephone interview. There was strong support from respondents for the grant of the application, with 'increased convenience' being the main reason for this support.
- 8 According to the applicant, ALDI operating at the Centre will add enormous choice and diversity to the modern shopping destination and will fit perfectly into the mix of services and facilities there and help to advance the overall role and value of the Centre.
- 9 The applicant submitted that there are many aspects of the ALDI liquor store model which differ from other packaged liquor outlets:
 - the combination of the ALDI Joondalup Liquor Store with the ALDI supermarket. A one-stop ALDI shopping experience;
 - the exclusive ALDI product range;
 - the small size of the display/browse area;
 - the location of the display/browse area within the supermarket;
 - the absence of refrigeration; and the absence of external presence and advertising of liquor; and
 - the combined effect of the above features together with the overall manner of trade and ADLI's approach to harm minimisation.
- 10 In respect of the existing liquor outlets at the Centre, it was submitted that none of these are visible from the ALDI supermarket and are not capable of providing convenient one-stop shopping for people wishing to shop at ALDI. It was further submitted that the Act does not restrict the number of licences that can be granted in any one area and the grant of the application will add to competition in the area.

McCusker Centre for Action on Alcohol and Youth (MCAAY)

- 11 According to MCAAY, the sale of alcohol inside a supermarket may contribute to normalising alcohol use among young people. This is particularly relevant given the location of the proposed liquor store to the Edith Cowan University Campus. University students are known to have concerning drinking patterns and the increased availability of alcohol, and in particular cheap alcohol, is likely to have a negative impact on young people in the locality. Research shows that young people are particularly responsive to the price of alcohol.

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- 12 It was further submitted that alcohol is no ordinary commodity, such as bread and milk and the harmful use of alcohol comes at a significant cost to society. The direct cost of alcohol-related problems to the Australian community in 2010 was conservatively estimated at \$14.352 billion, double the tax revenue from alcohol sales (\$7.075 billion). In terms of harm and ill-health:
- it is estimated that 75% of all police responses in WA are alcohol-related;
 - in 2014, an average of 12 ambulances a day were called to attend to Western Australians for the primary reason of alcohol intoxication (a total of 4,552 ambulance call-outs);
 - in 2014, there were 372 ambulance call-outs for alcohol intoxication for people aged 18 years or younger, including 10 children under 12 years, which equates to more than one WA child or teenager a day treated for alcohol intoxication by an ambulance; and
 - a study by the Australasian College for Emergency Medicine, which screened patients who presented to eight Australian and New Zealand emergency departments over one week in December 2014, revealed that overall, 1 in 12 presentations were alcohol-related and in peak times, 1 in 8 presentations were alcohol-related.
- 13 Supermarkets are places children and young people are likely to visit with or without their parents and the layout of the proposed liquor store means that children will be exposed to the sale and promotion of alcohol in places where they would not normally see it. According to MCAAY, the sale of alcohol within a supermarket has the potential for alcohol to be seen as part of a normal grocery shopping experience, which would appear to be the applicant's intent, as evidenced throughout its PIA. Although the applicant has indicated that juveniles loitering near the licensed area will be asked to move on, and no juvenile will be permitted in the licensed area unless accompanied by a responsible adult, MCAAY submitted that these controls are not sufficient. Research shows that alcohol promotion shapes young people's attitudes and behaviours, and contributes to the normalisation of alcohol use.
- 14 It was submitted that there is a commonly held, but flawed, belief that there would be benefits in moving to a "more European" approach, in which alcohol is widely available and children are introduced to alcohol at a young age which helps them learn to drink responsibly. However, this myth is not consistent with the available evidence. Recent research shows that young people who reported repeated drinking at home with their parents were more likely to report risky drinking in later adolescence than those who did not drink alcohol. It was submitted that increasing the availability of alcohol is likely to increase, rather than decrease, alcohol-related harms in Western Australia. It is important to also note that European countries including France, Italy and Spain experience higher rates of alcohol-related chronic diseases and road crashes than Australia.

- 15 ALDI's intention to sell very low priced alcohol at its stores was also a matter of concern for MCAAY. It was submitted that Woolworths and Wesfarmers are already in fierce competition when it comes to liquor prices, and the introduction of a third player may push the price of alcohol even lower, resulting in the greater economic availability of alcohol, and the potential increase in harm in the WA community. Research establishes that the price of alcohol has a significant impact on consumption and harm at the population level. When alcohol is more expensive, people drink less; and young people are particularly responsive to price. It was submitted that ALDI is already aware of the appeal of cheap liquor to young people. In response to ALDI winning an award for its \$4.99 South Point Rose, the ALDI buying director said:

“We see our market as young consumers, and they might come in for a \$5 tempranillo, and they'll think ‘well, I had a great experience, what else can I try?’”

- 16 According to MCAAY, packaged liquor accounts for 80.5% of all alcohol sold in Australia and the outlet density of packaged liquor facilities is positively associated with rates of assault, domestic violence, chronic disease and very heavy episodic drinking. A small percentage change in the availability of alcohol through packaged liquor outlets would be expected to have an identifiable impact on levels on alcohol consumption in WA. It was submitted that given the impact of cheap alcohol on alcohol-related harm, the introduction of another liquor outlet with such a strong focus on cheap alcohol may be harmful to the surrounding community, and in particular young people in the community.
- 17 It was submitted that the current situation in Western Australia is such that alcohol is generally not sold inside supermarkets with most liquor stores having separate registers and entry points from the supermarkets. Treating alcohol has just another ordinary commodity has the potential to negatively impact on the health and wellbeing of Western Australians.

Mostfun Enterprises Pty Ltd (Mostfun)

- 18 Mostfun objected on all of the grounds permitted under s 74(1) of the Act.
- 19 It was submitted that there are already three liquor stores at the Centre and a further five packaged liquor outlets elsewhere in Joondalup. In addition, there are two destination liquor stores in the locality, being Dan Murphy's Joondalup and Dan Murphy's Wanneroo. According to Mostfun, research demonstrates a strong correlation between liquor outlet density and alcohol-related harm in the community.
- 20 Mostfun also submitted that research indicates that the placement of alcohol alongside grocery items reinforces the idea that alcohol is a normal, non-harmful product and is comparable to other groceries and items purchased within a supermarket setting. This is particularly relevant in respect of children, who are acknowledged to be an ‘at-risk’ group for alcohol-related harm. Having liquor products available in a supermarket

environment increases the reach of alcohol-related harm, as patrons, including children are more regularly exposed to alcohol products and to the sale and promotion of alcohol. A larger and more broad section of the public, including children, visit supermarkets due to the availability of a wide range of everyday 'need' items such as confectionary, snacks, soft drinks, fresh bread, milk, fruit and vegetable products.

- 21 According to Mostfun, ALDI will be providing cheap liquor which will add to the existing anti-social behaviour and alcohol-related problems currently being experienced in the Joondalup City Centre. It was submitted that the City of Joondalup has indentified existing anti-social behaviour in the City Centre and developed a number of strategies to try and address the problem.

Executive Director Public Health (EDPH)

- 22 The EDPH intervened in the application to make representations regarding the risk of alcohol-related harm or ill-health specific to the application and the minimisation of that risk. The EDPH made submissions on the following:

- the association of the sale of packaged liquor with general supermarket goods, which can reinforce 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 grocery items can lead to increased consumption and harm;
- there is a relationship between price, consumption and harm, and ALDI Joondalup intends to provide the public with low priced liquor products; and
- if the licence is granted, the imposition of conditions that seek to separate alcohol from the general grocery items would be an important harm minimisation approach.

- 23 According to the EDPH, the integration of an alcohol browsing and sales area within the ALDI supermarket raises concerns regarding the potential for harm and ill-health to occur. Unlike separate dedicated liquor outlets, supermarkets are generally frequented by a larger and broader proportion of the population, including children, because of the daily 'need' type products for sale. ALDI's proposed manner of trade therefore increases the potential reach of alcohol-related harm due to the sale and promotion of alcohol in a setting and manner that would not normally occur in the community. It was also submitted that the applicant's proposed manner of trade has the potential to increase the exposure of alcohol to juveniles who may attend the store for general grocery supermarket items, either with or without a parent.

- 24 The EDPH also submitted that the integration of alcohol within the supermarket could lead to the normalisation of alcohol as an ordinary product similar to grocery items, which may result in increased consumption and harm. 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, given the de-emphasis on the drug properties of alcohol in the retail setting. According to the EDPH, the continued exposure to the sale, promotion and use of alcohol, particularly when presented as an ordinary commodity, sends the message that alcohol is an important, necessary part of everyday life. Packaged liquor sales are linked to alcohol-related harm and ill-health and there is a correlation between price, consumption and harm, and in respect of this application, the applicant proposes to provide the public with low priced liquor products.

- 25 The manner and context in which alcohol is made available within the community shapes and reinforces the drinking culture, impacting on societal views of what is deemed normal in terms of drinking patterns and behaviour. Research literature indicates that limiting the sale of alcohol from within the supermarket environment is an important harm minimisation strategy.
- 26 The EDPH submitted that the ability to purchase alcohol alongside general grocery items could encourage impulse or unplanned purchasing as a result of convenience and 'visual reminders', with ALDI customers purchasing alcohol when they would otherwise not have been considering such purchases. For example, a study of New Zealand alcohol sales before and after the introduction of wine availability in grocery stores found the sales of wine increased by 17% at a time when consumption of other beverages did not change.
- 27 Research data also indicates that the sale of alcohol is price responsive, that is, a reduction in price can result in an increase in consumption, and vice versa. This is important given the applicant's proposal to generally provide low priced alcohol products, which may lead to increased consumption which could in turn impact on the health and wellbeing of not just those most at-risk, but also the broader community.
- 28 In view of the potential risks highlighted in his submissions, the EDPH submitted that if the application is granted, the following harm minimisation conditions should be imposed on the licence:
- there must be a dedicated point of sale within the liquor browse/display area for liquor sales only, with no grocery purchases permitted at the liquor checkout;
 - the liquor display and sales area must be separated from the food/grocery display and sale area by barricading of non-see-through material over 2 metres in height;
 - the entry/exit point to the licensed area must have a gate; and
 - the licensed area must be closed off when not open for trade.

Statutory and legal framework

- 29 An applicant seeking the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest: s 38(2). There is a positive onus on an applicant to discharge this obligation (refer *Liquorland (Australia)*)

Pty Ltd v Executive Director of Health [2013] WASC 51; *Seoul Mart City Pty Ltd v Commissioner of Police* (LC27/2014).

- 30 It is therefore incumbent upon an applicant to adduce sufficient information to make it possible for the licensing authority to satisfy itself that the application is in the public interest. An applicant cannot do so by expressing assertions or opinions about the public interest; any assertion or opinion must be supported by appropriate evidence (refer *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* (LC/2015); *Seoul Mart City Pty Ltd v Commissioner of Police* (LC 27/2014); *Busswater Pty Ltd v Director of Liquor Licensing* (LC 17/2010).
- 31 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (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).
- 32 The burden of establishing the validity of any objection lies on the objector: s 73(10), however an intervener carries no onus to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321).
- 33 The factual matters that I am bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).
- 34 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.
- 35 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.
- 36 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 37 Section 16 provides that the licensing authority is to act according to equity, good conscience and the substantial merits of the case. The licensing authority should also act without undue formality and is not bound by the rules of evidence.
- 38 In considering the public interest, tension may arise between the primary object of minimising harm or ill-health caused to people, or any group of people, due to the use of liquor, and other objects contained in s 5 of the Act. When such conflict arises, the licensing authority must undertake a weighing and balancing exercise. The decision will depend on the particular circumstances of the case (refer *Executive Director of Public Health v Lily Creek International Pty Ltd* [2000] WASCA 258).
- 39 It is significant that the primary object in s 5(1)(b) is to 'minimise' harm or ill-health, not to prevent harm or ill-health absolutely. The word 'minimise' is consistent with the need to weigh and balance all relevant considerations (refer *Lily Creek supra*). It is a matter for the licensing authority to decide what weight to give to the competing interest interests and other relevant considerations (refer *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356).
- 40 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 (refer *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321; *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207).
- 41 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 the consideration can be taken into account (refer *Lily Creek supra*). The potential for harm or ill-health is to be taken into account by the licensing authority irrespective of whether the prospect is a possibility or a probability. It is a powerful public interest consideration (refer *Lily Creek supra*).
- 42 The question is whether, having regard to all the circumstances and the legislative intention, the grant of the application is justified. In answering this question, the licensing authority has a wide discretion. It is a matter for it to decide what weight to give to the competing interests and other relevant considerations (refer *Hermal supra*).
- 43 Finally, 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 the licensing authority

considers in the public interest. Further, s 33(2)(a) provides that an application may be refused, even if the applicant meets all the requirements of the Act. In *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384, EM Heenan J described the 'absolute discretion' provided for under s 33(1) in the following terms:

The 'absolute discretion' to grant or refuse an application of (sic) any ground or for any reason that the Commission considers in the public interest, s 33(1), is an example of a very full and ample discretion which is only confined by the scope and purpose of the Act which in turn is to be determined by the express objects of the Act and the legislation read as a whole: Hermal Pty Ltd v Director of Liquor Licensing [2001] WASCA356 [6] - [7] (Wallwork J) and Palace Securities v Liquor Licensing(1992) 7 WAR 241, 249 - 250 (Malcolm CJ) and 263 (Wallwork J). Section 5(2) in requiring the licensing authority to have regard to the primary and secondary objects of the Act, which have already been mentioned, obliges the licensing authority to pay regard to those objects on any application but does not otherwise confine the scope or meaning of the public interest or make those objects the exclusive considerations nor the sole determinants of the public interest: Re Michael; Ex parte Epic Energy (WA) Nominees Pty Ltd [2002] WASCA 231; (2002) 25 WAR 511, [52] - [55]; O'Sullivan v Farrer [1989] HCA 61; (1989) 168 CLR 210, 216 and Jericho Nominees Pty Ltd v Dileum Pty Ltd (1992) 6 WAR 380, 400.

Reasons for determination

- 44 The applicant seeks to establish a small packaged liquor outlet at the Lakeside Joondalup Shopping Centre. The proposed liquor store will be located within an ALDI supermarket, adjacent to the checkouts, with the browse/display area segregated from the grocery and household items. According to the applicant, the grant of the application will provide choice and diversity for consumers and the convenience of one-stop shopping for ALDI customers. It was also submitted that the locality is undergoing significant growth and development and the grant of the application will cater to both current and future demand.
- 45 There are three existing liquor stores at the Centre together with a tavern, and whilst the tavern has no dedicated packaged liquor facility it is nonetheless permitted to sell packaged liquor. Further, in the area surrounding the Centre there are five other packaged liquor outlets and three large 'destination' liquor stores: Dan Murphy's Joondalup, Dan Murphy's Currambine and Dan Murphy's Wanneroo.
- 46 In respect of the existing liquor stores at the Centre, the applicant submitted that none of these stores are visible from the ALDI supermarket and cannot provide convenient one-stop shopping for people wishing to shop at ALDI.
- 47 To justify the grant of the application, the applicant has relied, to a large extent, on the convenience factor of one-stop shopping. The applicant submits that the grant of the

application will provide convenient one-stop shopping for customers of the ALDI supermarket. However, in my view, the applicant has misconceived the concept of one-stop shopping as referred to by Buss JA in *Woolworths v Director of Liquor Licensing* [2013] WASCA 227 and various decisions of the Liquor Commission.

- 48 In *Woolworths*, Buss JA stated that it is a notorious fact that, in contemporary Australian life, one-stop shopping in large 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. However, providing liquor ancillary to grocery products does not constitute one-stop shopping. In *Liquorland (Australia) Pty Ltd v Commissioner of Police and Director of Liquor Licensing* (LC 18/2015) the Liquor Commission stated “*The ability to undertake ‘one-stop’ shopping, if there is a significant requirement for such a service.....does not mean the ability to combine one-trolley liquor and grocery purchases.*” One-stop shopping is a broad concept where people can undertake a range of shopping needs at the one location, not just grocery shopping.
- 49 The applicant has also relied upon survey data in which respondents either completed an on-line survey (157 respondents) or telephone interview (143 respondents). The prospect of convenience and good value were the most appealing aspects of the application for respondents. Patterson Research noted however, that for this region of Perth, currently most shopping for take-away alcohol takes place in a separate walk in and browse liquor store. This result is perhaps not surprising given the number of existing liquor stores in the locality and the prevalence of three Dan Murphy’s ‘destination’ outlets surrounding the Centre. Regrettably, Patterson Research did not elicit information from respondents about which particular liquor stores in the area they patronised and why those stores are preferred.
- 50 The onus falls upon the applicant to 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, I am required to take into consideration the objects of the Act. The primary objects of the Act, as set out in s 5(1) 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.
- 51 Catering to the requirements of consumers for liquor and related services under object 5(1)(c) must be considered in the context of the proper development of the liquor industry. Simply because some members of the public may express a view that the grant of a liquor store licence will provide them with added convenience in obtaining

packaged liquor, does not, in itself, justify the grant of an application. In this regard, the Liquor Commission in LC 21/2015 stated:

“If convenience was seen to be meeting the “public interest” requirement, then the weight to be accorded to that factor would also need to be reviewed in the context of the proper development of the liquor industry. In that respect, the provision of liquor products in supermarkets, delicatessens, butchers, or other retail outlets where grocery items are purchased regularly, and at which it would merely be convenient to buy liquor, is viewed by the Commission as not being a sufficient reason to grant an application for a liquor store licence.”

- 52 Such an approach is also consistent with the statutory policy of regulation contained in object 5(1)(a). Heenan J in *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384, said:

“Whether any particular licence application will or will not contribute to the proper development of the liquor industry or whether it will facilitate the use and development of premises in a manner which reflects the diversity of the requirements of consumers in this State are questions of fact, degree and value judgement... I have previously concluded that the primary objects of the Act set out in s 5(1)(c) are not the only or the exclusive objects of the Act and, except to the extent of any inconsistency, do not restrict considerations of the public interest required by s 33(1) or s 38(2).

Because the appellant has emphasised the potential significance of the primary objects of the Act set out in s 5(1)(c), it is necessary to observe that another primary object specified by s 5(1)(a) is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with the measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it.”

- 53 In my view, this application is merely predicated on providing a convenience to ALDI supermarket customers. In this regard, I note that the ALDI supermarket at the Centre is only 970m², which is not particularly large. The proposed benefits to the community are therefore very narrowly confined. By the applicant's own admission, the stock range will be relatively small and whilst some stock will be unique to ALDI, other mainstream products will be available. Therefore, the claimed benefits to the community in terms of diversity and choice of product would be modest. As I have already observed, currently there are three liquor stores and, to a lesser extent, a

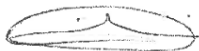
tavern, at the Centre to cater for the one-stop shopping requirements of customers using the Centre.

- 54 The proliferation of packaged liquor outlets would not be consistent with the public interest nor the objects of the Act. In the Second Reading Speech which accompanied the introduction of the *Liquor and Gaming Legislation Amendment Act 2006* (see *Parliamentary Debates, WA Parliament, vol 409, p 6342*) the then Minister for Racing and Gaming, the Hon. Mr Mark McGowan, stated:

“A key reform is the creation of the public interest test.... Under the public interest test, all applicants will be required to demonstrate that the application is in the public interest and the licensing authority will be required to consider the application based on the positive and negative social, economic and health impacts of the community.... it should be noted, however, that the government does not consider the proliferation of liquor outlets to be in the public interest and proliferation is not an outcome that would be supported by the public interest test.”

- 55 What the applicant proposes is essentially a duplication of existing liquor services at the Centre. I do not accept the applicant's submission that simply because none of the existing packaged liquor outlets at the Centre are visible from the ALDI supermarket that they cannot provide convenient one-stop shopping for people wishing to shop at ALDI. The overall modest benefits to the community from the grant of the application, as ascertained from the facts and circumstances of this case, should also be considered in light of the evidence submitted by the EDPH and MCAAY concerning the integration of liquor within a supermarket environment and the provision of mainly cheap liquor.
- 56 The commercial interests of an applicant, who may wish to establish a business selling alcohol, do not necessarily coincide with the public interest. Further, while some members of the community may express their support for a particular application, simply because a service is as convenient, or more convenient than that currently available does not, of itself, satisfy the primary and secondary objects or the public interest as specified in the Act.
- 57 As the Liquor Commission stated in LC 18/2015, the proper development of the liquor industry is not synonymous with the unrestricted expansion of liquor outlets to satisfy a desire on the part of some consumers of liquor or liquor related services for a relatively insignificant or inconsequential modification or improvement to the level of convenience. The long term interests of liquor industry are best served by a controlled development of the industry having regard to public perceptions of the industry and the overall health and well being of the community.
- 58 The Centre and the surrounding locality are well catered for in terms of packaged liquor outlets.

- 59 For these reasons, I find that the applicant has failed to discharge its onus under s 38(2) of the Act and the application is therefore refused.
- 60 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.
- 61 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