

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LTD

OTHER PARTIES: MCCUSKER CENTRE FOR ACTION ON ALCOHOL AND YOUTH (OBJECTOR)
CHIEF HEALTH OFFICER (INTERVENER)

PREMISES: ALDI SOUTH LAKE LIQUOR STORE

PREMISES ADDRESS: LAKES SHOPPING CENTRE, 620 NORTH LAKE ROAD, SOUTH LAKE

APPLICATION ID: A000188949

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

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 04 AUGUST 2017

Introduction

- 1 Aldi Foods Pty Ltd (the applicant) has made an application for the conditional grant of a liquor store licence for premises to be known as ALDI South Lake Liquor Store and located in the Lakes Shopping Centre, 620 North Lake Road, South Lake. 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. Pursuant to s 73 of the Act, an objection to the grant of the application was lodged by Ms Julia Stafford on behalf of the McCusker Centre for Action on Alcohol and Youth (MCAAY), while the Chief Health Officer (CHO) lodged a notice of intervention under s 69.
- 3 The application will be determined on the written submissions of the parties, as permitted by ss 13 and 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

The case for the applicant

- 4 The applicant proposes to establish a supermarket with an adjacent liquor store at the South Lake Shopping Centre (the Centre). The proposal is for a boutique type liquor service designed to complement and accompany the diverse ALDI supermarket services and facilities.
- 5 The proposed liquor store will incorporate a browse/display of approximately 30m², which includes a single licensed checkout. The applicant will offer 95 non-refrigerated liquor items for sale, which will include some exclusive products. According to the applicant, the

ALDI liquor store model had been developed based on the company's many years of extensive supermarket and packaged liquor retailing experience.

- 6 The applicant lodged a Public Interest Assessment (PIA) in accordance with the policy of the Director of Liquor Licensing. The PIA provided information on the applicant's proposed manner of trade, details of the locality surrounding the proposed premises, the social health indicators for the area, the 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 undertake a market research survey of residents of the locality. This survey indicates that:
 - 90% of respondents were quite likely to shop at the ALDI shop;
 - a significant majority of respondents indicated that the key attributes that would be provided in the applicant's proposed liquor store appealed to them; and
 - almost 3 out of 4 respondents who buy packaged liquor indicated that if they were shopping in the ALDI store they would also utilise the liquor store.
- 8 According to the applicant, there are several essential factors that support the grant of the application:
 - existing package liquor services in the area have not kept pace with the growth and development of the area;
 - the Centre has fallen far behind in contemporary consumer standards and expectations;
 - a substantial section of the public has provided clear evidence of demand for, and intended usage of, the proposed liquor store;
 - the applicant has a proven ability to cater for the requirements of consumers in many other locations in Australia;
 - the site of the proposed premises is excellent, situated in an established and popular shopping centre; and
 - the role of the Centre on the locality.
- 9 It was submitted by the applicant that its proposal represents substantial benefits to the public. Whilst the licensed area and volume of stock may be smaller than many existing liquor stores, these factors do not diminish the valuable features of the operation in serving the public. In fact, these are positive factors because of the harm minimisation effect. According to the applicant, the grant of the application will be an important addition to choice, diversity and convenience for shoppers in the locality.

The objector

- 10 MCAAY objected on the ground permitted under s 74(1)(a) of the Act, namely that the grant of the application would not be in the public interest.
- 11 The objection canvassed several issues, including:

- the normalisation of alcohol: It was submitted that the sale of alcohol in such close proximity to groceries has the potential for alcohol to be seen as a normal part of the everyday grocery shopping experience. The proposed location of the liquor store would make buying alcohol easier, and therefore more available. Ease of access to alcohol and treating alcohol as an ordinary grocery item may contribute to normalising alcohol use among young people;
 - increase in the availability of cheap liquor: It was submitted that the applicant's proposal to sell very low-priced alcohol would result in greater economic availability of alcohol, which has the potential for increased harm in the community. Research indicates that the price of alcohol has a significant impact on consumption and harm from alcohol at a population level. When alcohol is more expensive people drink less, and young people are particularly responsive to price; and
 - large volume of alcohol at low prices: Although the applicant proposes to only have a limited number of lines, it was submitted that certain products will be in high demand due to their low cost and this will lead to a large volume of these products being stocked and sold at the proposed liquor store. As a result, people will have greater access to higher volumes of alcohol, which may lead to increased consumption and further abuse.
- 12 MCAAY noted that the applicant identified in its PIA that the locality has a large proportion of at-risk populations; including young people, families with children and Aboriginal and Torres Strait Islanders. It was submitted that the concerns raised in the objection are particularly relevant given the higher than average proportion of at-risk groups in the locality.

The intervention

- 13 The CHO intervened to make representations regarding the risk of alcohol-related harm and ill-health specific to the application, and the minimisation of that harm or ill-health. The CHO made submissions on the following matters:
- the association of the sale of packaged liquor with general supermarket goods 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 everyday grocery items can lead to increased consumption and harm;
 - there is a relationship between price, consumption and harm, and the applicant intends to provide the public with consistently low priced products;
 - there is an existing level of alcohol-related harm and ill-health occurring in the locality of the proposed liquor store, some of which is above the State rate; and
 - if the licence is granted, the imposition of conditions that seek to separate the alcohol from the general grocery items, would be an important harm minimisation strategy.
- 14 In respect of the existing alcohol-related harm in the area, the CHO noted that:

- between 1 January 2013 and 31 December 2015, there were 423 domestic assault offences recorded in the suburbs of South Lake, Bibra Lake and Yangebup. Of these domestic assault offences, 110 (26%) were recorded as alcohol-related; and
- the suburb of South Lake, where the proposed liquor store will be located, experienced higher rates of alcohol-related domestic assaults per 1,000 persons than that of the State in 2013 and 2015.

- 15 It was submitted by the CHO that it is a reasonable assumption that community members living within the locality are likely to frequent the ALDI South Lake store and if the application is granted, the proposed liquor store will be operating within a suburb which experiences greater levels of alcohol-related domestic assault than the State. The CHO referred to various research which demonstrated that packaged liquor is a contributor to alcohol-related harm in the community in the form of assaults, road crashes, child maltreatment and hospitalisations. Research also shows that the sale of alcohol alongside grocery items can lead to increased alcohol consumption and alcohol-related harm.
- 16 According to the CHO, it is relevant to consider the impact that the introduction of a new liquor store selling low priced alcohol may have on existing levels of harm and ill-health in the locality. Consequently, the CHO recommended that if the application is granted conditions which separate the display and sale of alcohol from the general grocery items and shopping areas would be an important harm minimisation approach.

Legislative and legal framework

- 17 In determining this application, I have been guided by the following legal principles.
- 18 An applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest.¹ An applicant must therefore adduce sufficient evidence to discharge this burden.
- 19 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.²
- 20 An intervener carries no onus to establish their assertions of fact or opinion³, however, pursuant to s 73(10) of the Act the burden of establishing the validity of any objection lies on the objector.
- 21 The factual matters which I am bound to consider 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 5.⁴
- 22 The primary objects of the Act are:

¹ Refer s 38(2) of the Act.

² **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).

³ **Re Gull Liquor** (1999) 20 SR (WA) 321).

⁴ **Woolworths v Director of Liquor Licensing** [2013] WASCA 227).

- 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.

23 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.

24 The licensing authority is also entitled (but not bound) to consider the factual matters set out in s 38(4) of the Act as part of the public interest considerations.⁵

25 In the conduct of proceedings under the Act, 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, is not bound by the rules of evidence and makes its determination on the balance of probabilities.⁶

26 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.⁷ However, it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.⁸

27 Section 33(1) provides that the 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.

Determination

28 The applicant proposes to establish a supermarket within the Lakes Shopping Centre and seeks to sell packaged liquor in a segregated area at the front of the supermarket. The proposed liquor store will have a limited range of stock (approximately 95 lines) and all liquor sold will be at room temperature, with no refrigerated liquor products being available.

⁵ *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).

⁶ Refer s 16 of the Act

⁷ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

⁸ *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.

- 29 The locality in which the premises is located is situated within the City of Cockburn and includes mainly the suburbs of South Lake, Bibra Lake and Yangebup. The locality comprises a wide variety of land uses including commercial, retail, industrial, residential and recreational. Nearly 20,000 people live in the locality, and the population is increasing. It was submitted by the applicant that the City of Cockburn is a thriving district within the Perth metropolitan area.
- 30 According to the applicant, the addition of ALDI will contribute enormously to this growing and maturing shopping destination and it will help cater for the growth and development occurring in the area and support the needs of the increasing resident population.
- 31 The intervener highlighted the existing rate of alcohol-related harm in the locality, which indicates that the locality experiences some elevated rates of harm. I note that at the 2011 Census the City of Cockburn, within which the proposed liquor store is located, scored 1,034.6 on the SEIFA Index of disadvantage. This compares favourably with other local government authorities. The applicant's evidence indicates that the locality surrounding the proposed liquor store is enjoying a positive state of socio-economic health and is quite an advantaged area.
- 32 I note that there is good support from the local community for the grant of the application as evidenced by the Patterson survey data.
- 33 In consideration of the evidence submitted by the applicant, I find that the grant of the applicant would be consistent with objects 5(1)(c) and 5(2)(a) of the Act.
- 34 The objector and intervener also expressed concerns about the integration of liquor with grocery products and the negative effect this may have in terms of alcohol consumption and resultant harm in the community. Assessing the likely degree of harm or ill-health to result from the grant of the application is essentially a matter prediction⁹, and where harm is a consideration in an application, it needs to be considered in accordance with the test outlined by Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing*.¹⁰ Although the rate of alcohol-related domestic assaults in the suburb of South Lake was higher than the State rate in 2013 and 2015, when regard is given to the overall circumstances and profile of the locality, and the nature and scale of the business to be conducted under the licence, I am satisfied that the grant of the application does not pose an unacceptable risk to the community. Object 5(1)(b) of the Act is directed towards the minimisation of harm and is not about preventing harm absolutely.¹¹
- 35 I am also mindful that recently the Liquor Commission in ALDI Harrisdale¹² indicated that the concerns of MCAAY can be mitigated through the imposition of conditions on the licence. I therefore find that, in this case, the objection has not been made out as required under s 73(10) of the Act.

⁹ *Lily Creek* supra

¹⁰ [2015] WASC 208

¹¹ *Lily Creek* supra

¹² LC 09/2017

- 37 Consequently, I am satisfied that the applicant has discharged its onus under s 38(2) of the Act. Having complied with all the statutory requirements and conditions precedent to the application being granted, a liquor store licence is conditionally granted to the applicant subject to the following conditions:
- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - (b) compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premises;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 20 October 2015;
 - (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 **03 August 2018** pursuant to s 62(4)(c) of the Act.
- 38 On confirmation of the conditional grant, the following conditions will be imposed on the licence. These are the same conditions that were imposed by the Liquor Commission in ALDI Harrisdale.

Trading hours

The permitted trading hours are those prescribed in s 98D of the Act.

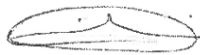
Trading conditions

- 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.

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.

- 39 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 40 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 41 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.
- 42 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