

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LIMITED

OTHER PARTIES: CHIEF HEALTH OFFICER (INTERVENER)

PREMISES: ALDI BANKSIA GROVE LIQUOR STORE

PREMISES ADDRESS: 3 JEWEL WAY, BANKSIA GROVE

APPLICATION ID: A000225813

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

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 23 AUGUST 2017

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 known as ALDI Banksia Grove Liquor Store and located at 3 Jewel Way, Banksia Grove. 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 (the Director). There were no objections to the grant of the application, however, the Chief Health Officer (CHO) lodged a notice of intervention pursuant to 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 a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.¹

The applicant's proposal

- 4 The applicant proposes to establish a stand-alone supermarket in a new commercial and retail precinct in the suburb of Banksia Grove. The liquor store will be located at the front of the supermarket with a separate browse/display area of approximately 21m² and a single licensed checkout. The applicant will offer 95 non-refrigerated liquor items which consists of a selection of wines, beers, spirits, ciders and liqueurs.
- 5 The applicant lodged a Public Interest Assessment (PIA) to support the application and address the requirements of the Act and the policies of the Director. The PIA provided details on the ALDI liquor model, the social health indicators for the locality, the likely

¹ Refer s 16(7) of the Act.

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

- 6 It was submitted by the applicant that data from the 2011 Census suggests that the socio-economic standing of the locality is comparable with the State average, with the locality recording a higher level of full-time employment and higher incomes at a personal, family and household level than the State average. In addition, the applicant stated that the North-East division of the City of Wanneroo, within which the site of the premises is located, records “significantly lower” rates of alcohol-related hospitalisations and deaths than the corresponding State averages. According to the applicant, this indicates that the area is in a positive state of social health and could not be considered to be a community where the potential for harm to vulnerable groups outweighs the benefits to consumers.
- 7 The applicant submitted that there are several key low risk elements and features of the application, including:
 - the licensed area is small;
 - the bright, open-plan layout;
 - the absence of refrigeration to help avoid impulse buying and impulse drinking;
 - the limited stock range and volume;
 - the absence of bulk quantities of cheap mainstream products;
 - the browse/display area is easily monitored by staff;
 - the clearly defined and demarcated licensed area; and
 - the lack of signage external to the store advertising discounted liquor.
- 8 The applicant engaged Patterson Research Group to conduct a community survey of adult residents in the locality. This survey indicated that 85% of respondents who buy packaged liquor are likely to use the proposed liquor store and this proportion increases to 89% amongst respondents who buy packaged liquor at least once a month.
- 9 The applicant also engaged Deep End Services (DES), an economic research and property consulting firm, to report on:
 - the application site with respect to its location in a developing residential growth area and emerging District Centre;
 - an analysis of the likely trade area;
 - recent and projected dwelling and population growth of the trade area;
 - demographic and economic data; and
 - the density of existing liquor licences in the locality.
- 10 The DES report made the following conclusions:
 - the ALDI site is well-positioned in the heart of an emerging District Centre serving a rapidly growing catchment;
 - the site will have good access, parking, lighting, security and surveillance;
 - Banksia grove has been one of the fastest developing suburbs in metropolitan Perth in the last 10 years. The suburb and broader catchment will continue to grow;

- the District Centre, with its co-located retail, commercial and community uses will service a catchment area extending beyond the typical 3km 'locality' for a licence application in the outer Perth suburbs;
- the demographic profile reveals a young, aspirational population base in new, detached dwellings. The area has had strong workforce participation levels and lower unemployment than the Perth average;
- the pattern of SEIFA scores across the catchment area is positive and the average score is above the Perth average. The area has no inherent level of disadvantage and demographic profile suggests there are no obvious minority groups that may be adversely impacted by an increase in available liquor licences; and
- the density of licences with a packaged liquor service is low in the Banksia Grove locality compared to other outer area localities with similar population levels.

11 According to the applicant, its PIA has evaluated all issues relevant to the public interest, and it has addressed both the positive and negative points associated with its proposal. It was submitted that there are few risks associated with the grant of the application, and these are outweighed by the many positive public interest factors.

The intervention

12 The CHO intervened in the application to make representations regarding the risks associated with the grant of the application and the minimisation of those risks through the imposition of conditions on the licence.

13 Submissions and evidence on the following issues were provided by the CHO:

- the association of the sale of packaged liquor with general supermarket goods 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 ALDI Banksia Grove intends to provide the public with consistently low priced alcohol products;
- there are at-risk groups within Banksia Grove, who are at increased risk of alcohol-related harm;
- the rates of alcohol-related domestic assaults in the suburb of Banksia Grove were higher than the State rate in 2015 and 2016; and
- research indicates there is a relationship between packaged liquor and an increased risk of violence in domestic settings.

14 In respect of the existing alcohol-related harm in the locality, the following data was submitted:

- between 1 January 2014 and 31 December 2016, there were 581 treatment episodes for people residing in the surrounding suburbs at treatment services funded by the

Mental Health Commission, of which one in four (n = 149) identified alcohol as the primary drug of concern;

- between 1 January 2014 and 31 December 2016, there were 99 alcohol-related domestic assault offences in the locality;
- in the suburb of Banksia Grove, during the period 1 January 2014 to 31 December 2016, there were 50 reported alcohol-related domestic assault offences; and
- the suburb of Banksia Grove experienced higher rates of alcohol-related domestic assaults per 1,000 persons than the State average in 2015 and 2016.

15 In view of the above, the CHO recommended, as a harm minimisation strategy, that conditions be imposed on the licence to separate alcohol from the general grocery items.

Legislative and legal framework

16 In determining this application, I have been guided by the following legal principles.

17 An applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest.² An applicant must therefore adduce sufficient evidence to discharge this burden.

18 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.³

19 An intervener carries no onus to establish their assertions of fact or opinion⁴.

20 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 5.⁵

21 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.

22 The secondary objects of the Act are:

² Refer s 38(2) of the Act.

³ **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.

⁴ **Re Gull Liquor** (1999) 20 SR (WA) 321.

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

- 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.
- 23 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.⁶
- 24 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.⁷
- 25 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.⁸ However, it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.⁹
- 26 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

- 27 According to the evidence presented, Banksia Grove is a developing residential area which has seen significant growth in the past 10 years. ALDI proposes to develop a stand-alone supermarket in an emerging District Centre within Banksia Grove which will service a rapidly growing catchment area. At the front of the supermarket, the applicant seeks to establish a discreet packaged liquor outlet, which will have one licensed checkout. The applicant proposes to offer about 95 non-refrigerated liquor products, consisting of wine, beer, spirits, ciders and liqueurs.
- 28 It was submitted by the applicant that there are many low risk features to the application and when this is coupled with the positive socio-economic profile of the locality, the grant of the application is unlikely to have a negative impact on the local community.
- 29 I note that there is good community support for the grant of the application as reflected in the data obtained by the Patterson Research Group.

⁶ *Woolworths supra*.

⁷ Refer s 16 of the Act

⁸ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

⁹ *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.

- 30 The factual matters I am required to consider when determining this application are those relevant to the primary and secondary objects of the Act. In this regard, the applicant's evidence establishes, in my view, that the grant of the application would cater to the requirements of consumers for liquor and related services, in accordance with object 5(1)(c).
- 31 There are of course other objects of the Act to which regard must be had. Object 5(1)(b) is directed towards the minimisation of harm, caused to people, or any group of people due to the use of liquor. However, this object is not about the prevention of harm absolutely.¹⁰
- 32 The intervener has provided evidence of existing alcohol-related harm occurring the locality surrounding the proposed liquor store. In response, the applicant submitted that the treatment episodes for people residing in the surrounding suburbs equate to one presentation per week from a locality with an estimated population in 2017 of 32,801 and this must therefore be kept in perspective.
- 33 It is essentially a matter of prediction as to whether the grant of an application may result in an unacceptable level of alcohol-related harm in the community.¹¹ 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*.¹²
- 34 In respect of the rate of alcohol-related domestic violence, there were 99 recorded incidents in the locality in the three-year period 2014 to 2016, of which 50 were in the suburb of Banksia Grove. Relevantly, in 2015 and 2016 Banksia Grove recorded higher rates of domestic violence (per 1,000 persons) than the State average, although I note that this rate was trending downwards, with a significant drop in the rate from a peak in 2015 to a rate slightly above the State rate in 2016.
- 35 The evidence indicates that the locality is not disadvantaged and has strong workforce participation levels. When the evidence is considered in its totality, particularly the circumstances and profile and the locality in the context of the nature and scale of the business to be conducted under the licence, and this is assessed in the manner outlined by Allanson J in *Carnegies*, I am satisfied that the grant of the application does not pose an unacceptable risk to the community.
- 36 I am also mindful that in ALDI Harrisdale¹³, the Liquor Commission noted the concerns raised about the integration of liquor with grocery items and the potential for the grant of the application to lead to the normalisation of alcohol in the community and possibly lead to an increase in alcohol consumption and harm, however, the Liquor Commission was of the view that those concerns could be mitigated through the imposition of appropriate conditions on the licence. This of course must be considered in context, because in ALDI Harrisdale, the Liquor Commission found that the existing levels of harm and ill-health in

¹⁰ **Lily Creek** supra.

¹¹ **Lily Creek** supra

¹² [2015] WASC 208

¹³ LC 09/2017

that locality were no higher than other areas of the State and that the grant of that application was unlikely to result in an increase in harm and ill-health to such a degree that would be considered unacceptable. Even in those circumstances, the Liquor Commission thought it necessary to impose some restrictive conditions on the licence in order to minimise the potential negative impacts that the operation of the licence may have on the local community.

- 37 In this regard, the applicant argued that if conditions are to be imposed, they should reflect the conditions imposed by the Liquor Commission in ALDI Harrisdale. Each case must be considered on its merits¹⁴, however, I accept the applicant's submissions that the conditions imposed by the Liquor Commission in ALDI Harrisdale would be an appropriate harm minimisation strategy in the circumstances of this application.
- 38 Consequently, I am satisfied that the applicant has discharged its onus under s 38(2) of the Act and has complied with all the statutory requirements and conditions precedent to the application being granted. 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 1960, Health 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 25 January 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 **22 August 2018** pursuant to s 62(4)(c) of the Act.
- 39 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

The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

- 1) The licensee is prohibited from selling refrigerated liquor products;

¹⁴ Refer s 16 of the Act.

- 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.

- 40 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 41 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 42 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.
- 43 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