

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

**APPLICANT:** ALDI FOODS PTY LIMITED

**OTHER PARTIES:** MCCUSKER CENTRE FOR ACTION ON ALCOHOL AND YOUTH (OBJECTOR)  
CITY OF BELMONT (OBJECTOR)  
CHIEF HEALTH OFFICER (INTERVENOR)  
COMMISSIONER OF POLICE (INTERVENOR)

**PREMISES:** ALDI CLOVERDALE LIQUOR STORE

**PREMISES ADDRESS:** TENANCY T37, BELMONT FORUM, 227 BELMONT AVENUE, CLOVERDALE

**APPLICATION ID:** A000216454

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

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

**DATE OF DETERMINATION:** 3 October 2017

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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 Cloverdale Liquor Store and located at Tenancy T37, Belmont Forum, 227 Belmont avenue, Cloverdale. 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). Objections to the grant of the application, as permitted under ss 73 and 74 of the Act, were lodged by Ms Julia Stafford on behalf of the McCusker Centre for Action on Alcohol and Youth (MCAAY) and by the City of Belmont. The Chief Health Officer (CHO) and the Commissioner of Police (the Commissioner) lodged notices of intervention 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 a high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.<sup>1</sup> The evidence and submissions of the parties are briefly summarised as follows.

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

### The applicant's proposal

- 4 The applicant seeks to establish what can be described as a typical ALDI liquor store which will be part of a new ALDI supermarket in the Belmont Forum Shopping Centre (the Centre). The proposed liquor store will:
  - have a small browse area of about 22m<sup>2</sup> together with a single licensed checkout;
  - offer about 95 non-refrigerated liquor products, including beer, wine, cider and spirits; and
  - have liquor products that are unique to the applicant.
- 5 As required under the Director's policy, the applicant submitted a Public Interest Assessment (PIA) to support its application. The PIA provided information on ALDI's liquor 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; existing outlet density in the area; and the low risk features of the proposal.
- 6 According to the applicant's PIA:
  - the total rate of alcohol-related hospitalisations in Belmont for the period 2007-2011 was significantly higher (1.17 times) than the corresponding State rate, however it was submitted that the proposed liquor store is not likely to have any adverse impact on residents or contribute to any exacerbation of this data;
  - there is clearly some crime occurring in the locality and this is most likely explained by the fact that the locality is an inner-city precinct which has a component of high density residential zoning;
  - there are no significant stand-out at risk group or sub-community present in the locality;
  - at the 2011 census, the City of Belmont recorded a SEIFA<sup>2</sup> index of 7 out of 10 when ranked against all other local government municipalities;
  - unemployment in the locality is significantly higher than the State rate; and
  - median weekly incomes (personal, family and household) for the locality are all lower than the State rate.
- 7 It was submitted that the proposed liquor store has several low risk features, 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.

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<sup>2</sup> Socio-Economic Index for Areas.

- 8 According to the applicant, its main customer base will comprise mainly people living in the locality, which takes in the suburbs of Cloverdale, Belmont, Rivervale and Kewdale. The applicant engaged Patterson Market Research to conduct a survey of residents in the area. Two surveys were conducted: a telephone survey and an intercept survey of shoppers who frequent the ALDI Belmont supermarket. In respect of the telephone survey, two thirds of alcohol buyers reported that if they were shopping in ALDI Belmont, and it had packaged liquor available, they would buy their packaged liquor requirements at the proposed liquor store. For the intercept survey, 68% of those who buy packaged liquor products found the proposed liquor store to be either 'extremely' or 'very' appealing.

### **The objections**

#### *McCusker Centre for Action on Alcohol and Youth*

- 9 It was submitted by MCAAY that the grant of the application would not be in the public interest.<sup>3</sup> In support of its ground of objection, submissions and evidence were presented on the following issues:
- 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.
- 10 MCAAY noted that the applicant in its PIA stated that there is no evidence linking increased availability of alcohol and increased consumption and further stated that while the number of liquor stores across Australia has increased, the per capita consumption of alcohol has decreased. However, according to MCAAY, comparing the number of liquor outlets to per capita consumption is overly simplistic and may mask the reality that very problematic drinking has remained relatively stable, and may be increasing among older Australians. It was also noted by MCAAY that per capita consumption in Western Australia is substantially higher than the national average.

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<sup>3</sup> A ground of objection permitted under s 74(1)(a) of the Act.

- 11 It was submitted by MCAAY that The World Health Organization (WHO) reports that the “Commercial and public availability of alcohol can have a reciprocal influence on the social availability of alcohol and thus contribute to changing social and cultural norms that promotes harmful use of alcohol.” The WHO also recommends restricting access to retail alcohol, including through restrictions on outlet density and retail sales in certain places, as one of the “best buys” to reduce harmful alcohol use.

*The City of Belmont*

- 12 According to the City of Belmont, alcohol abuse is an emerging issue in the locality which already has 70 permanent liquor licences (as at 2014).

- 13 It was submitted that the City of Belmont has the second lowest SEIFA score in metropolitan Perth (a score of 987) and areas such as Cloverdale (the locality of the proposed outlet) have a lower score of 964. The City of Belmont Alcohol and Health profile for Belmont indicates that:

- 35.4% of males and 12.2% of females participate in high risk drinking behaviours;
- there has been an increase in alcohol-related cases attended by St John Ambulance from 2008-09 (n=24 cases) compared to 2012-13 (n=102 cases);
- between 2009 to 2013, Cloverdale had the largest number of Emergency Department (ED) presentations due to alcohol;
- the estimated cost of ED attendance by residents as a result of drug and alcohol consumption was \$55,331 in 2011;
- residents were hospitalised a total of 375 times because of alcohol-related conditions;
- residents experienced significantly higher death rates for alcoholic liver cirrhosis than the State average;
- Aboriginal residents had the highest number of ED presentations in 2012; and
- of the ED presentations, the most frequent age group was 31-45 years, followed closely by 16-30 years. ED presentations from the age of 16 demonstrates that there is an existing alcohol issue for the City’s youth.

- 14 In 2014, the City of Belmont engaged Dr Melissa Stoneham to undertake a survey to provide a snapshot of alcohol and its impacts on the community, its residents, business owners and staff of the City of Belmont. This survey indicated that:

- the key transport hub of the Faulkner Civic Precinct is impacted by people under the influence of alcohol;
- in the evening, particularly on weekends, some areas of the City are prone to alcohol-related activities that are of concern to the public;
- the presence of groups of people affected by drinking alcohol is creating or increasing the perception of fear;
- some community members are afraid to walk in the evenings or use parks after dark;
- there are noise problems associated with alcohol-related activities in streets and parks, which in some cases go well into the night;

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- there is evidence of environmental damage – vandalism, litter, public urination, violence; and
  - there are alcohol hotspots, as identified by community members, which include Kooyong Road/Wilson Park Precinct and Faulkner Civic Precinct and its adjacent bus stop. The issues witnessed in these hotspots include drinking in a public place, general anti-social behaviour, violence and abuse and fear for personal safety.
- 15 In respect crime and safety data, the City of Belmont Community Safety Team reports that between November 2013 to November 2016, there were 123 reports by the public about anti-social behaviour at the Wright Street bus stop (transport hub servicing the Faulkner Civic Precinct and the Belmont Forum) that required City of Belmont security attendance. Of these incidents, 112 (91%) were alcohol-related. During the same period, there were 431 assaults in the area.
- 16 The objection from the City of Belmont was accompanied by a letter from the City's Aboriginal Reference Committee (ARC), which comprises representatives of the local Aboriginal community. This letter states that:
- the ARC has real and present concerns with regards to alcohol and anti-social behaviours specific to the Aboriginal community in Belmont;
  - the potential introduction of another liquor outlet, particularly one that offers substantially reduced priced packaged liquor is of concern;
  - three per cent of the population of the City of Belmont is of Aboriginal and Torres Strait Islander descent and one of the driving factors for the establishment of the ARC in 2014 was the increase in alcohol and drug related anti-social behaviour and criminal activity across Belmont;
  - these alcohol-related problems have resulted in older Aboriginal grandparents becoming the primary carers of young children and contributed to an increase in substantial negative impacts on the health and wellbeing of three generations of Aboriginal people;
  - over the past 12 months, the ARC in partnership with the City has contracted Palmerston Association and the Nyoongar Outreach Services to offer local outreach alcohol and drug support intervention services in the area; and
  - the grant of the application will significantly and negatively impact the physical and mental health; social and financial wellbeing of multiple generations of local Aboriginal people, and those transient individuals and groups from the north and mid-western parts of the State, who visit family locally in order to receive primary allied health services in Belmont.

### **The interventions**

*The Chief Health Officer*

- 17 The intervention by the CHO highlighted the risks associated with the grant of the application and recommended how those risks could be minimised through the imposition of appropriate conditions on the licence.
- 18 Submissions were made on the following matters:
- 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 price, consumption and harm, and ALDI Cloverdale intends to provide the public with consistently low priced alcohol products; and
  - there is an existing level of alcohol-related harm and ill-health in the locality of the proposed liquor store, some of which is above the State rate.
- 19 It was submitted by the CHO that even moderate levels of on-going alcohol-related harm or incidents in an area can indicate that one or more structural, environmental and/or community factors exist that support the problems to occur, making the potential for further harm greater if a new variable is introduced, such as a new liquor store.
- 20 The following data was provided by the CHO on the existing level of alcohol-related harm occurring in the locality of the proposed liquor store:
- between 1 July 2013 to 30 June 2016, there were 966 domestic assault offences of which 260 were alcohol-related;
  - alcohol-related domestic assaults per 1000 persons have been trending upwards over the past three years in the suburbs of Belmont and Rivervale, with domestic assault rates significantly higher than the State rate (5.0 and 4.0 respectively compared to the State rate of 2.5);
  - alcohol-related non-domestic assault offence rate per 1000 persons in the suburbs of Cloverdale (1.7) and Belmont (1.9) are significantly above the State rate (1.2); and
  - in the past three years, there have been 290 drink driving charges where the suburbs of last drink were recorded as Cloverdale, Belmont, Rivervale or Kewdale, of which 194 were recorded as having their last drink at a private residence (this corresponds to people who are likely to have been drinking packaged liquor).

*Commissioner of Police*

- 21 The Commissioner intervened to provide evidence and submissions to assist the licensing authority make an informed decision in respect of the application, and if the application is approved, recommend conditions to mitigate the risks posed by the operation of the premises.

22 The Commissioner provided data on the existing crime rate in the locality for the period 2011 to 2015. This data indicates that:

- The suburbs of Belmont, Cloverdale and Rivervale have all experienced rates of alcohol-related domestic assaults per 1,000 people above the State rate over this period, and in 2015, Belmont (3.44) and Rivervale (3.86) were significantly above the State rate (2.44) while Cloverdale (1.96) and Kewdale (1.5) were below the State rate, however, the overall average for the four suburbs (2.67) was above the State rate; and
- In 2015, the suburbs of Belmont (1.39), Cloverdale (1.27) and Riverdale (1.42) all experienced rates of alcohol-related non-domestic assaults per 1,000 people above the State rate (1.20), with only Kewdale (0.14) recording a rate below the State rate.

### Legislative and legal framework

23 In determining these applications, I have been guided by the following legal principles.

24 An applicant for the grant of a licence must satisfy the licensing authority that the grant of the application is in the public interest.<sup>4</sup> An applicant must therefore adduce sufficient evidence to discharge this burden.

25 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.<sup>5</sup>

26 An intervenor carries no onus to establish their assertions of fact or opinion<sup>6</sup>, however, pursuant to s 73(10) of the Act the burden of establishing the validity of any objection lies on the objector.

27 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.<sup>7</sup>

28 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.

29 The secondary objects of the Act are:

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<sup>4</sup> Refer s 38(2) of the Act.

<sup>5</sup> **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.

<sup>6</sup> **Re Gull Liquor** (1999) 20 SR (WA) 321.

<sup>7</sup> **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.
- 30 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.<sup>8</sup>
- 31 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.<sup>9</sup>
- 32 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.<sup>10</sup> However, it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.<sup>11</sup>
- 33 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

- 34 Pursuant to s 38(2) of the Act, the applicant must satisfy the licensing authority that the grant of the application is in the public interest. The factual inquiry is directed to those matters relevant to the primary and secondary objects of the Act, as set out in [28] and [29] above.
- 35 According to the applicant, the proposed liquor store will principally cater for all the reasonable liquor shopping needs of ALDI supermarket customers, who will be mainly comprised of people living in the locality. It was submitted that the liquor store is designed to provide premium shopping convenience in terms of:
- One-stop shopping;
  - One-transaction shopping;
  - One-stop ALDI shopping; and
  - One-trolley shopping.

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<sup>8</sup> *Woolworths supra*.

<sup>9</sup> Refer s 16 of the Act

<sup>10</sup> *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

<sup>11</sup> *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.



- 36 The applicant also submitted that the results of the Patterson survey show that many people living in the locality will shop at the ALDI Cloverdale Liquor Store on a regular basis.
- 37 I have considered the applicant's evidence and submissions and I find 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) of the Act. However, I must also consider the application in the context of the other objects of the Act.
- 38 The objectors and interveners have referenced national and international research relating to the negative impact of introducing low-priced alcohol into an area; the impact of outlet density in terms of increased harms within the community; the relationship between packaged liquor and alcohol-related harm; and the risks associated with the integration of liquor within supermarkets.
- 39 The research demonstrates a clear link between price, availability and resultant alcohol-related harm in the community. However, as stated by Wheeler J in *Lily Creek*<sup>12</sup> and Bell J in *Kordister*<sup>13</sup> (having quoted Wheeler J in *Lily Creek*), the research evidence must then be considered with regard to the proved circumstances of the particular locality in which the licensed premises is to operate:

*"..... by its very nature, much evidence about harm minimisation will be general and expert in nature. It may be epidemiological or sociological, to name just two of the different disciplines which may be involved. It will not necessarily be evidence relating directly to the particular premises, neighbourhood or locality concerned. It may nonetheless be relevant and admissible, for it may, depending on the circumstance, assist in determining the likelihood that harm is occurring or will occur, the nature of that harm and what contribution can be made to minimising it. Such evidence may be especially important where it is connected by other evidence with the 'particular local, social, demographic and geographic circumstances' of the given case."<sup>14</sup>*

- 40 The evidence from the parties provides the following insight into the locality surrounding the proposed liquor store:
- the City of Belmont has the second lowest SEIFA score in metropolitan Perth (987) and areas such as Cloverdale have a lower score of 964, indicating a degree of disadvantage;
  - unemployment is higher than the State rate;
  - medium weekly incomes are lower than the State rate;
  - there has been an increase in alcohol-related cases requiring attendance by St John Ambulance;

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<sup>12</sup> *Executive Director of Public Health v Lily Creek International & Ors* [2001] WASCA 410

<sup>13</sup> *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207

<sup>14</sup> Per Bell J in *Kordister* supra.

- residents experienced significantly higher death rates for alcoholic liver cirrhosis than the State average;
- alcohol-related hospitalisations are significantly higher than the State rate;
- The proposed liquor store is adjacent to the Faulkner Civic Precinct, and this is a hotspot for alcohol-related problems;
- three per cent of the population of the City of Belmont is of Aboriginal and Torres Strait Islander descent and a local ARC was established because of the increase in alcohol and drug related anti-social behaviour and criminal activity across Belmont;
- there is existing and concerning levels of alcohol-related harm being experienced by the Aboriginal population of the area;
- more recently, because of concerns about the high rate of alcohol-related harm, the Palmerston Association and the Nyoongar Outreach Service were contracted to provide alcohol and drug intervention services, at a substantial cost to rate payers;
- alcohol-related domestic assaults per 1000 persons have been trending upwards over the past three years in the suburbs of Belmont and Rivervale, with domestic assault rates significantly higher than the State rate (5.0 and 4.0 respectively compared to the State rate of 2.5);
- alcohol-related non-domestic assault offence rate per 1000 persons in the suburbs of Cloverdale (1.7) and Belmont (1.9) are significantly above the State rate (1.2); and
- there have been a significant number of persons charged with drink driving in the area where their last drink was at a private residence (this corresponds to people who are likely to have been drinking packaged liquor).

41 In response to the objections and interventions, the applicant submitted that:

- although the sale and supply of liquor has the potential to cause some risks, the nature of its proposal presents only very low risks;
- the interventions and objections are based on some highly speculative propositions, almost all of which have no connection to the applicant or the specifics of its actual liquor store proposal; and
- none of the other parties have had any regard for the importance of choice and diversity that the liquor store will provide, the valuable one-stop shopping convenience associated with it and the low risk features of the liquor store model.

42 The applicant also submitted that the objections and interventions are not supported by the evidence as to the experience in the eastern states in relation to ALDI's 260+ liquor stores and the finding by the licensing authority in New South Wales that ALDI "has a good regulatory record" (ALDI Lake Haven application) and "the small scale of the proposed licensed area is a mitigating factor" (ALDI Vincentia).

43 According to the applicant, these facts diminish the credibility and any weight to be given to the interventions and objections. In my view, however, the reference by the applicant to the findings by the Independent Liquor and Gaming Authority of New South Wales, should be placed into some context, because the applicant did not provide the circumstances surrounding the quote and has failed to acknowledge that not all its applications to sell

packaged liquor in NSW have been approved, with some applications being refused because of concerns about the likely negative impacts upon the local community.<sup>15</sup>

- 44 In fact, the ALDI Lake Haven application was refused and it is worth repeating in full some of the findings of the Independent Liquor and Gaming Authority of New South Wales in that decision, to give the quote relied upon by the applicant some contextual meaning -

*“331. Socioeconomic disadvantage is not considered in isolation, but is considered to be a compounding factor of concern in this case, when there is already evidence of higher rates of localised domestic violence offences in the local community in the context of higher than State average rates recorded for the broader community, of which this local community is a part.*

*332. As noted in the research that is disclosed in the Appendix to Authority Guideline 6, socioeconomic disadvantage has been consistently linked as a factor in rates of domestic violence (see for example Livingston, "A Longitudinal Analysis of Alcohol Outlet Density and Domestic Violence" (2011), Addiction).*

*333. Socio-economic disadvantage in a given community is a further risk factor when assessing the relative vulnerability of a given community to adverse liquor related impacts.*

*334. The Authority has considered the Applicant's submissions as to those measures (such as business policies) that the Applicant will implement to reduce or minimise the scope for alcohol related harm generated by the operation of the business, above and beyond the minimum requirements of the legislation.*

*335. The Authority accepts that the ALDI Group has a good regulatory record and accepts that its well-developed internal business policies described in the Application will be in place. The Authority has also taken into account that the location of the Premises within a shopping centre provides certain benefits in terms of surveillance and security that other street front retailers may not. The Authority further notes security measures such as the CCTV system and a back to base security alarm system.*

*336. The Authority accepts that the licensee will participate in the local liquor accord and notes that it has agreed to the imposition of a condition to that effect. The Authority further notes the Applicant's proposal that liquor not be sold refrigerated and accepts that this is a practical harm minimisation measure designed to discourage the impulse*

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<sup>15</sup> NSW Independent Liquor & Gaming Authority web site.

*consumption of liquor products after purchasing them from the ALDI Supermarket.*

337. *Nevertheless, the Authority considers that the Applicant's staff will only have the meaningful capacity to monitor the point of sale and its immediate environs, and the measures disclosed in the material before the Authority do not overcome the prevailing sensitivity of the location and surrounding area to alcohol related impacts on public amenity that have been established on the basis of the submissions from NSW Police and NSW Health.*
338. *A substantial body of research on the effects of alcohol outlet density and alcohol pricing and promotions is before the Authority in relation to this Application, including the BOCSAR Paper, the studies noted in Authority Guideline 6 (particularly the Livingston reports) and the further research articles referred to by NSW Health.*
339. *Broadly, this research provides a general cause for concern, establishing that positive relationships have been identified in Australian and international studies between the density of liquor outlets and increased alcohol related assault; increased outlet densities and motor traffic accidents, alcohol-attributable hospital admissions and death; increased packaged liquor licences and violent crime within urban neighbourhoods; and increased density and increased underage alcohol consumption. The UK University of Sheffield research notes the relative vulnerability of youth drinkers to alcohol pricing.*
340. *However, this decision has turned upon the credible and specific local information provided by Police and NSW Health as to the rate and persistence of anti-social conduct in the immediate area surrounding of the Premises. The Shopping Centre is already problematic for alcohol related misconduct and the Authority considers it more likely than not that the competitively priced liquor to be sold by this Aldi Supermarket will be attractive to persons who abuse packaged liquor. The licensed business will contribute to the already challenging local environment for alcohol related anti-social conduct and the new business will contribute to those problems, along with the incumbent licensees servicing that community.”*
- 45 Object 5(1)(b) of the Act is directed towards the minimisation of alcohol-related harm in the community. This encompasses harm to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm. It encompasses harm to personal safety and the freedom to move in the streets without hindrance, disturbance and molestation.<sup>16</sup>

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<sup>16</sup> *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321 and *Kordister* supra

46 Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 held that where object 5(1)(b) was relevant to the determination of an application there are four steps to be undertaken, namely:

- make findings that specifically identified the existing level of harm and ill-health in the relevant area due to the use of liquor;
- make findings about the likely degree of harm to result from the grant of the application;
- assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
- weigh the likely degree of harm, so assessed, together with any other relevant factors to determine whether the applicant has satisfied the licensing authority that it was in the public interest to grant the application.

47 Based on the evidence submitted by the objectors and interveners, and in particular the evidence I have referenced in paragraph [40] above, I find that there is a high rate of pre-existing alcohol-related harm and ill-health in the locality surrounding the proposed liquor store.

48 Assessing the likely harm to result from the grant of the application is, by necessity, a matter of prediction, however, in making such an assessment I am not required to find as a fact that harm *will* occur because of the grant of the application, or to find a causal link. Ipp J in *Lily Creek*<sup>17</sup> stated that:

*“whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to at 516 in Malec v JC Hutton Pty Ltd, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.”*

49 According to the applicant’s PIA, it does not discount products on a daily or weekly basis, but rather prices are maintained at a consistently low level. An examination of the proposed stock list indicates that the clear majority of wine products are under \$10, with some bottles of wine as cheap \$2.79 and 4 litre casks of wine being sold for \$8.89. A six pack of (some) beer, a 4 pack of cider or a 6 pack of vodka crush all cost under \$10.

50 The grant of the application will see the introduction of low priced packaged liquor into a locality already experiencing high rates of alcohol-related harm. The locality is socio-economically disadvantaged with existing at-risk persons who are vulnerable to alcohol abuse. Further, those persons are likely to be attracted to the applicant’s supermarket and also attracted to the very cheap liquor that would be available immediately adjacent to one of the checkouts.

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<sup>17</sup> *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

- 51 Accordingly, when I consider the research material submitted by the objectors and interveners; the evidence of the existing alcohol-related harm in the locality; the socio-economic profile of the area; and the presence of at-risk persons, I find that it is highly likely, on the balance of probability, that over time the grant of the application will contribute to the high rate of alcohol-related harm that presently exists in the locality. I do not accept the applicant's submissions that the low risk features of its proposal will sufficiently mitigate the potential risks to this community. The harm caused by packaged liquor occurs away from the licensed premises and in circumstances beyond the control of the applicant.
- 52 If conflict arises in promoting the objects of the Act, I must weigh and balance those competing interests and ultimately, decide what weight to give to the competing interests and other relevant considerations.<sup>18</sup>
- 53 In determining what weight to give to the competing interests in this case, the following factors are relevant to that consideration:
- there is already a Liquorland liquor store at Belmont Forum to cater to the one-stop shopping requirements of consumers, including ALDI customers;
  - the Belmont Tavern, which has a BWS drive through, is nearby and this outlet, together with the other packaged liquor outlets in the locality provide consumers with choice and competition; and
  - although the applicant intends to provide some unique liquor products, not all liquor products it proposes to sell fall within this category and therefore I am of the view that this benefit to the community is modest.
- 54 In LC 18/2015, the Liquor Commission observed at [125] to [129] that:

*“Convenience is just one factor to be considered when considering the requirement of consumers for liquor - under the current Act it must be considered having regard to the proper development of the liquor industry, the other objects of the Act and, of course, the public interest.*

*It is accepted in the community, as evidenced by the many and varied shopping centres and precincts, that there may be some level of inconvenience experienced in purchasing liquor.*

*Liquor is a product that may have negative consequences in the community and is subject to extensive regulation as to its sale, supply and consumption. These controls and restrictions exist for the benefit of the community and whilst some members of the community may express a desire for more convenience, the Commission is entrusted with the responsibility of making a determination on whether the public interest is served by any proposal to widen or extend the level of convenience*

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<sup>18</sup> *Hermal supra*

*currently enjoyed by the public by the extension or granting of certain licences.*

*Many shopping centres and precincts, for example, have independent liquor stores quite removed from the local supermarket, and, for that matter, removed from the bakery, post office, bank, butcher or other retail outlets or public utilities regularly frequented as part of a person's or family's weekly or regular shopping expedition. Some liquor stores are even located in relatively isolated areas separate from a shopping centre or precinct.*

*A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission's view, in accordance with the provisions and intent of the Act."*

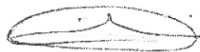
- 55 I note that in ALDI Harrisdale<sup>19</sup>, the Liquor Commission acknowledged the concerns of MCAAY and the CHO relating to the integration of alcohol and grocery items but was of the view that those concerns could be mitigated through the imposition of appropriate conditions on the licence (by separating the liquor and grocery areas). However, this conclusion must be considered in conjunction with the Liquor Commission's finding that the existing levels of harm and ill-health in the Harrisdale locality were no higher than other areas in the State.
- 56 However, the facts and circumstances of this case are clearly different, where the evidence establishes that the locality surrounding the ALDI Cloverdale liquor store experiences high rates of alcohol-related domestic and non-domestic assaults, together with other alcohol-related anti-social behaviour and harm. The Cloverdale locality is socio-economically disadvantaged with at-risk persons requiring alcohol and drug treatment services.
- 57 In circumstances where there is already a high level of alcohol-related harm in the community, it may be that even the smallest risk of a further increase in harm is considered not acceptable. This principle was explained by Edelman J in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51):

*'In assessing the overall question of whether granting the application is in the public interest it is relevant to consider the baseline level of risk and, in that context, the effect of an increase in risk from the baseline level. It may be that where an existing level of risk is greater, a small increase in risk is less likely to be tolerated. Similarly, it is relevant that there are existing 'at risk' persons who might be further affected.'*

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<sup>19</sup> LC 09/2017

- 58 Consequently, when I weigh the competing interests in this case, based upon the totality of the evidence presented, I find that the marginal benefits to consumers, if the application is granted, are outweighed by the likelihood of an increase in harm and ill-health due to the use of liquor. In my view, this possible increase in harm poses an unacceptable risk given the profile of this locality.
- 59 The applicant has not been able to demonstrate that the overall social impact of granting the application would not be detrimental to the well-being of the local community. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:
- “The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public ....and its content will depend on each particular set of circumstances.”*
- 60 I therefore find that the applicant has failed to discharge its onus under s 38(2) and satisfy me that the grant of the application is in the public interest and accordingly, the application is refused.
- 61 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.
- 62 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