

DECISION OF DIRECTOR OF

LIQUOR LICENSING

FIRST APPLICANT: LIQUORLAND (AUSTRALIA) PTY LTD

OTHER PARTIES: LAKELANDS TAVERN PTY LTD (OBJECTOR)
MR ADAM RILEY (OBJECTOR)

PREMISES: LIQUORLAND LAKELANDS

PREMISES ADDRESS: LAKELANDS SHOPPING CENTRE, 49 BANKSIADALE GATE, LAKELANDS

APPLICATION ID: A000214254

SECOND APPLICANT: ALDI FOODS PTY LTD

OTHER PARTIES: LAKELANDS TAVERN PTY LTD (OBJECTOR)
MR ADAM RILEY (OBJECTOR)
MCCUSKER CENTRE FOR ACTION ON ALCOHOL AND YOUTH (OBJECTOR)
CHIEF HEALTH OFFICER (INTERVENER)

PREMISES: ALDI LAKELANDS LIQUOR STORE

PREMISES ADDRESS: LAKELANDS SHOPPING CENTRE, 49 BANKSIADALE GATE, LAKELANDS

APPLICATION ID: A000215346

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

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 17 AUGUST 2017

Introduction

- 1 Liquorland (Australia) Pty Ltd (Liquorland) seeks the conditional grant of a liquor store licence for premises to be known as Liquorland Lakelands and located in the Lakelands Shopping Centre (the Centre), 49 Banksiadale Gate, Lakelands.
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. Objections, pursuant to ss 73 and 74 of the *Liquor Control Act 1988* (the Act), were lodged by Lakelands Tavern Pty Ltd and Mr Adam Riley.
- 3 ALDI Foods Pty Ltd (ALDI) lodged an application for the conditional grant of a liquor store licence for premises to be known as ALDI Lakelands Liquor Store and located in the Lakelands Shopping Centre. This application was advertised for public comment and objections to the grant of this application were lodged by Lakelands Tavern Pty Ltd,

Mr Adam Riley and Ms Julia Stafford on behalf of the McCusker Centre for Action on Alcohol and Youth (MCAAY) . Pursuant to s 69 of the Act, the Chief Health Officer (CHO) lodged a notice of intervention.

- 4 Each application is made pursuant to ss 47 and 62 of the Act.
- 5 Because these applications relate to premises in close proximity to each other, I determined that there may be overlapping public interest considerations relevant to both applications, and therefore the applications should be heard together. Consequently, pursuant to s 16(12) of the Act, the evidence relating to one of them is evidence relating to the other.
- 6 The applications will be determined on the written material lodged by the parties as permitted under ss 13 and 16 of the Act. 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
- 7 The evidence and submissions of the parties are briefly summarised as follows.

Liquorland's proposal

- 8 The proposed liquor store will be a part of a greenfields shopping centre development designed to cater for the growing community at the Lakelands Private Estate as well as surrounding suburbs.
- 9 The store will be browse only with no drive-through facilities. It will be located adjacent to a proposed Coles supermarket with the only entrance to the liquor store being from the mall area of the Centre. The proposed store will be a typical Liquorland branded outlet consisting of the following:
 - Selling area of 130m²;
 - Coolroom area of 25m²; and
 - Stock area of 10m².
- 10 Liquorland submitted a Public Interest Assessment (PIA) to support its application and discharge its onus under s 38(2) of the Act. Included with the PIA was:
 - a town planning report prepared by MGA Town Planners (MGA report);
 - a social impact and amenity report prepared by Bodhi Alliance (Bodhi report); and
 - a survey of residents conducted by data analysis Australia Pty Ltd (DAA survey).
- 11 According to the DAA survey, 72% of respondents support the application and this far outweighs those who oppose the application (11%). The survey indicated that many residents are likely to use the Centre quite frequently, changing a significant proportion of

¹ Refer s 16(7) of the Act.

their supermarket shopping to it, which will also see a shift in packaged liquor purchases to the Centre. Overall, 73% of respondents indicated that they would use the proposed liquor store.

12 It was submitted by Liquorland that the key aspects of its application are:

- the locality is currently undergoing significant residential development and is experiencing a large increase in population;
- the Centre will be a district activity centre, which is expected to provide a full range of consumer services, including packaged liquor, and be a focal point for the Lakelands community as well as adjoining suburbs;
- as part of the Centre, the proposed liquor store will:
 - a) provide everyday value and one-stop shopping convenience that is currently lacking in the locality; and
 - b) greatly contribute to the amenity of the area.
- the locality is socio-economically advantaged and does not have a large population of groups that could be considered 'at-risk' of alcohol-related harm;
- the locality has low outlet density, which is reflected in the community desire for a full-service shopping centre;
- the results of the DAA survey show that residents in the locality overwhelmingly support the store; and
- the store is unlikely to have a significant impact on the local community and this is reflected in the results of the consultation with key community stakeholders.

ALDI's proposal

13 ALDI proposes to establish a supermarket at the Centre with a small liquor section adjacent to the checkouts. The browse/display area will be approximately 22m² and will take the shape of a square, open on one side with the shelving displays forming a simple U shape. There will be about 95 non-refrigerated liquor products for sale, which will include some products exclusive to ALDI. It was submitted that the ALDI liquor store model has been developed based on ALDI's many years of supermarket and packaged liquor retailing experience.

14 ALDI submitted a PIA to support its application. The PIA provided information on ALDI's proposed manner of trade, details of the locality surrounding the proposed store, the social health indicators for the locality, likely impact on the amenity of the neighbourhood, security and crime prevention initiatives and the low risk features of the application.

- 15 Patterson Market Research was engaged by ALDI to conduct a market survey of residents in the area. This survey indicated that 83% of respondents would 'quite likely' or 'very likely' shop at the ALDI store.
- 16 It was submitted by ALDI that the locality surrounding the proposed liquor store is fast growing and the area is sorely lacking in packaged liquor services. According to ALDI, there are no known negative public interest considerations or other factors which should impede the grant of the application.

Common evidence relating to the locality and the Centre

- 17 Both Liquorland and ALDI provided information on the demographic profile of the local community and the development of the Centre. The following is taken from those submissions.
- 18 The Centre will be a district activity centre and will form part of the Lakelands Private Estate. The Centre will be anchored by a Coles Supermarket, Kmart, ALDI supermarket and include 40 speciality stores and service providers. There will also be a restaurant, service station, gym and two fast food outlets.
- 19 The Centre is to be developed on land located 6km north of the Mandurah CBD. The locality surrounding the Centre contains the suburbs of Lakelands, Singleton, Madora Bay, San Remo, Parklands, Darling Downs, Stakehill and Meadow Springs. The locality is divided centrally by Mandurah Road and contains the Perth-Bunbury Highway in the eastern part of the locality.
- 20 Urban development exists on both the western and eastern side of Mandurah Road, extending north from the Mandurah CBD. Within the suburb of Lakelands, additional housing is in the process of being developed on each side of Mandurah Road that will consolidate and connect the existing development, including coastal development in Madora Bay.
- 21 In 2011, the locality had a population of 9,547 persons, being an increase of 190.2% above the 2006 population. If the population has continued to grow at this rate, the 2016 population is likely to be approximately 14,076 persons.
- 22 According to the City of Mandurah Activity Centres Strategy, the Lakelands District Activity Centre is intended to be the highest order centre in the locality, with typical retail types including supermarkets and convenience goods. District activity centres have a greater focus on servicing the daily and weekly needs of residents.
- 23 In respect of the social health indicators for the locality:
 - individual, household and family incomes were all above the State and Greater Perth medians as at 2011;

- there is no significant concentration of groups potentially at-risk of alcohol-related harm or ill-health in the locality, other than a higher proportion of families and children;
- the SEIFA Index of Relative Socio-economic Advantage and Disadvantage indicates that the suburbs of Lakelands and Singleton are relatively advantage, while the suburbs of Madora Bay, San Remo and Meadow Springs experience a level of disadvantage;
- alcohol-related hospitalisation data for the period of 2007-2011, indicates that the City of Mandurah has lower rates of alcohol-related hospitalisations and deaths than the corresponding State average; and
- whilst there is some crime occurring in the locality, the rate of criminal activity is low.

The objections

Lakelands Tavern Pty Ltd

- 24 Lakelands Tavern Pty Ltd (Lakelands Tavern) is the applicant for the grant of a tavern licence in Lakelands. It objected to both applications.
- 25 According to Lakelands Tavern, the grant of the Liquorland application would not be in the public interest because the availability of cheap liquor at the proposed liquor store may lead to consumers making impulse purchases, leading to increased alcohol consumption and the potential for increased alcohol-related harm. It was submitted that there is already a Liquorland liquor store in the Meadow Springs Shopping Centre which provides the same range of products that the applicant proposes and there are two further packaged liquor outlets in the locality, namely the Madora Bay Tavern and Cellarbrations at Meadow Springs.
- 26 In respect of the ALDI application, it was submitted that the one-stop shopping being offered is only to ALDI customers and not to the general public and therefore ALDI customers would be the only persons who may benefit from the grant of the application.
- 26 It was also submitted that the increase in outlet density may lead to an increase in alcohol-related harm in the community, including an increase in crime and violence. According to Lakelands Tavern, alcohol-related harm from the grant of the applications will negatively impact on the amenity of the surrounding community.
- 27 Lakelands Tavern opined that its proposed tavern will carry a stock range that is larger and more diverse than the range offered in Liquorland stores or by ALDI and it will provide more convenience for customers due to a drive-through facility.

Mr Adam Riley

- 28 Mr Riley is the licensee of Cellarbrations Meadow Springs. Mr Riley submitted that there is already an adequate number of packaged liquor outlets in the area to service the public and the grant of the applications may lead to an increase in theft. Mr Riley also submitted

that there are several schools in the area that may be negatively impacted if the applications are approved by an increase in broken glass in the playgrounds.

The McCusker Centre for Action on Alcohol and Youth

29 MCAAY objected to the ALDI application on the basis that the grant of the application would not be in the public interest. Primarily, MCAAY is concerned that the sale of liquor inside a supermarket may contribute to normalising alcohol use among young people.

30 It was noted by MCAAY that there are several identified at-risk groups in the locality of the proposed liquor store:

- the proportion of young people aged 14 years and younger is higher than the State average;
- the proportion of young people aged 19 years and young is higher than the State average;
- the average age of persons in Lakelands is lower than the State average; and
- the proportion of couple families with children in Lakelands is higher than the State average.

31 It was submitted by MCAAY 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.

32 Further, it was submitted by MCAAY 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.

33 Although the applicant proposes to only have a limited number of lines, it was submitted by MCAAY 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.

The intervention

34 The CHO intervened in the application 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 through the imposition of appropriate conditions on the licence should the application be approved.

35 Submissions and evidence were presented 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; and
- there is a relationship between price, consumption and harm, and the applicant intends to provide the public with consistently low priced products.

36 It was submitted by the CHO that in order to minimise the risks posed by the grant of the application as outlined above, conditions clearly separating the display and sale of liquor from general grocery items would be an important harm minimisation approach.

Legislative and legal framework

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

38 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.

39 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

40 An intervener carries no onus to establish their assertions of fact or opinion⁴, however, pursuant to s 73(10) of the Act the burden of establishing the validity of any objection lies on the objector.

41 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

42 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

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 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.
- 43 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.
- 44 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
- 45 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
- 46 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
- 47 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

- 48 Both applicants seek to establish a liquor store in the new Lakelands Shopping Centre:
- a) Liquorland wants to establish a 165m² convenience style browse outlet adjacent to a Coles supermarket. The entrance to this premise will be from the mall of the Centre; and
 - b) ALDI wants to establish a small outlet of approximately 22m² adjacent to the checkouts of its new supermarket in the Centre. A discreet, non-refrigerated range of liquor products will be available to the public.

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.

- 49 Given the proximity of the two premises, I determined that the applications should be heard together because there may be public interest considerations relevant to both applications.
- 50 The question I must resolve is whether each applicant has discharged its onus under s 38(2) of the Act, and then, whether in accordance with the discretion afforded the licensing authority under s 33(1), to grant one, both or none of the applications. In exercising this discretion, I must weigh and balance the competing interests and make a determination on the balance of probabilities.
- 51 The evidence establishes that:
- the Lakelands Shopping Centre will be a district activity centre and is intended to be the highest order centre in the locality;
 - the locality is experiencing significant population growth;
 - the SEIFA Index indicates that the suburbs of Lakelands and Singleton are relatively advantaged, while there is some disadvantage experienced in the suburbs of Madora Bay, San Remo, and Meadow Springs;
 - alcohol-related harm and crime in the locality is lower than the State average in some respects and is not above what is commonly accepted within the community; and
 - there is good community support for the grant of each application.
- 52 Other than general assertions about the relationship between alcohol and harm, Lakelands Tavern and Mr Riley provided no evidence specific to these applications within this locality. In assessing the risks associated with the grant of these applications, I must assess the risk, not in some abstract sense, but rather the risk having regard to the proved circumstances of the particular area in relation to which the application is made.¹⁰ Also, I think it is disingenuous for Lakelands Tavern to suggest that an increase in outlet density may increase crime and violence while at the same time espousing the advantages of its proposed tavern and how it will carry a larger and more diverse range of liquor than either of the applicants. I must also note at this juncture that I have not had regard to the submissions from Lakelands Tavern dated 21 June 2017.¹¹
- 53 The burden of establishing the validity of any objection lies on the objector. In my view, the objections by Lakelands Tavern and Mr Riley are predicated on trying to protect their market share in the area and I find that these objectors have failed to discharge their onus as required under s 73(10) of the Act.

¹⁰ Wheeler J in *Executive Director Public Health v Lily Creek International Pty Ltd & Ors* [2001] WASCA 410

¹¹ The parties were afforded an opportunity to lodge submissions in light of the Liquor Commission's recent decision in ALDI Harrisdale, however Lakelands Tavern's submissions in this regard contained material that was out of scope and not in accordance with the directions of this office.

- 54 In respect of the matters raised by MCAAY and the CHO, I note that the Liquor Commission in ALDI Harrisdale¹² was of the view that there are conditions that can be imposed on the licence that will mitigate those concerns. This is more relevant if the locality in which the proposed liquor store will be located is not experiencing rates of alcohol-related harm higher than other areas.
- 55 In this regard, it was submitted by ALDI that if the licensing authority is of the view that any conditions should be imposed on its licence, then the conditions imposed by the Liquor Commission in ALDI Harrisdale should be applied.
- 56 In determining these applications, I am also mindful that 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.¹³ This notorious fact adds support to each applicant's proposal to establish a packaged liquor outlet in the Centre.
- 57 Consequently, in considering the evidence presented by Liquorland and ALDI in these applications and the findings at [51] above, I am satisfied that each applicant has demonstrated that the grant of their respective application is in the public interest as required under s 38(2) of the Act. There is no evidence before me to suggest that granting two liquor store licences in the same shopping centre, particularly in view of the facts and circumstances in this case, would result in an unacceptable level of harm or ill-health in the local community.
- 58 Therefore, each application is approved.
- 59 Accordingly, a liquor store licence is conditionally granted to Liquorland 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 19 September 2016;
 - (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

¹² LC 09/2017.

¹³ *Woolworths supra*

- (f) the applicant seeking confirmation of the grant on or before **16 August 2018** pursuant to s 62(4)(c) of the Act.

Conditions to be imposed on the issue of the licence

Trading hours

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

Trading

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

CCTV

The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing. Images recorded via the video surveillance system must be retained for 28 days (or such period as the Director of Liquor Licensing specifies) and must be made available for viewing or removal by the police or other persons authorised by the Director;

Tasting condition

Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
- (d) Compliance with the Food Act 2008 at all times.
- (e) Tastings per sample must not exceed the following measures:
 - (i) Wine – 50 mls
 - (ii) Beer – 100 mls
 - (iii) Spirits – 15 mls.
- (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.

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.

- 60 A liquor store licence is conditionally granted to ALDI, 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 23 September 2016;
 - (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 **16 August 2018** pursuant to s 62(4)(c) of the Act.
- 61 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

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

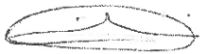
- 1) The licensee is prohibited from selling refrigerated liquor products;
- 2) There is to be no external advertising of liquor products on the façade of the licensed premises;
- 3) The browse/display area is to be closed off when not open for trade;
- 4) The licensee is to have and maintain a CCTV 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.

- 62 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 63 The applicants are reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 64 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.
- 65 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