

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LIMITED

OTHER PARTIES: EVANGEL CHURCH (OBJECTOR)
CHIEF HEALTH OFFICER (INTERVENOR)
COMMISSIONER OF POLICE (INTERVENOR)

PREMISES: ALDI MIDLAND

PREMISES ADDRESS: MIDLAND GATE SHOPPING CENTRE, 274 GREAT
EASTERN HIGHWAY, MIDLAND

APPLICATION ID: A000243796

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

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 20 JUNE 2018

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 located in the Midland Gate Shopping Centre, 274 Great Eastern Highway, Midland and to be known as ALDI Midland. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 In accordance with instructions issued by the Director of Liquor Licensing, the application was advertised for public comment. An objection, pursuant to ss 73 and 74 of the Act, was lodged on behalf of the Evangel Church (the objector) while notices of intervention, under s 69 of the Act, were lodged by the Chief Health Officer (CHO) and the Commissioner of Police (the Commissioner).
- 3 The application will be determined on the written submissions of the parties as permitted under ss 13 and 16 of the Act. In addition, 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

A brief overview of the applicant's proposal

- 4 The applicant proposes to establish a typical ALDI packaged liquor outlet as part of its supermarket within the Midland Gate Shopping Centre (the Centre). The applicant has a standard business model for its liquor stores which is well known to this authority through various similar applications and need not be repeated in any great detail here, save to note the following key features;

¹ Refer s 16(7) of the Act.

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- there will be a small browse/display area of approximately 21m², together with a single licensed checkout;
 - there will be about 95 non-refrigerated liquor products on offer; and
 - some of the liquor products will be unique to the applicant.
- 5 To support its application, the applicant lodged a detailed Public Interest Assessment (PIA) which included the following documents:
- a Survey of Consumers Requirements prepared by Patterson Research Group (the Patterson report); and
 - a Locality Report prepared by Deep End Services (the DES report).
- 6 The Patterson report provided the following information:
- 93% of respondents indicate that they are “at least quite likely” to shop in the new ALDI supermarket;
 - 80% of respondents who ever buy packaged liquor indicated that if they were shopping in the ALDI supermarket they would be “quite likely” to also buy their packaged liquor requirements;
 - 52% of respondents do not purchase packaged liquor when shopping for groceries, while 26% purchase some packaged liquor ‘most of the time’ when shopping for groceries and 23% about half the time;
 - 71% of respondents purchase packaged liquor in a special trip to a walk-in browse liquor store most or at least half the time;
 - 80% of respondents indicate they would find it more convenient to be able to purchase packaged liquor while doing regular grocery shopping; and
 - 80% of respondents indicated that they are at least ‘quite likely’ to buy packaged liquor when shopping at an ALDI supermarket.
- 7 The DES report noted that:
- Midland is a Strategic Metropolitan Centre;
 - the Midland Gate Shopping Centre is undergoing a \$100 million redevelopment;
 - the proposed licensed area comprises a 22m² self-serve section with no refrigerated products and no external advertising or signage indicating the presence of liquor in-store;
 - the store’s catchment will have a small local base close to the store where regular visits are generated based on proximity and competition. Its broader secondary catchments are where customer frequency is much lower, yet still important, and is influenced by ALDI’s unique offering and broader appeal of the Town Centre;
 - Midland has a regional catchment which is influenced by regional road links;
 - the catchment area for the shopping centre is expected to increase by 18,650 people in the next 10 years – mainly in the secondary north and west sectors. Medium density development in and around the Town Centre will also see 3,150 people added to the primary sector;

- Midland is traditionally an old, lower income area developed in the post-war period. It has also been a source of cheap housing particularly in the large residential area north of the Town Centre. Younger families and couples are attracted to the newer growth areas;
 - average individual incomes in the primary trade area were 14% below the Perth average in 2016 while household income levels were 26% lower;
 - car ownership is lower with 10% of dwellings in the primary area having no vehicle (Perth 5%);
 - the Aboriginal population was 4.5% of the primary trade area population in 2016 – down from 5.6% on 2006 (Perth 1.5%);
 - public housing is 6.4% of all private dwelling in the primary area (Perth 2.9%);
 - the primary area has a lower income profile; however, the mix of low and other households seems to be changing. In 2006, average income levels in the primary sector were 25% below the Perth average while in 2016 they had improved to be 14% below average;
 - while the local area of Midland has a higher proportion of Aboriginal persons, more public housing, more disabled residents and lower average income levels; these measures appear to have reduced in the last 10 years;
 - as at 31 March 2017, Midland-Guildford had an unemployment rate of 11.5% compared to Perth rate of 6%;
 - the unemployment rate in and around Midland is higher than the surrounding residential suburbs which represents Midland's traditional blue-collar workforce;
 - Midland's unemployment rate is 2-3 percentage points higher than the residential areas surrounding it;
 - across Perth, Midland has the 17th highest unemployment rate of 142 statistical local areas; and
 - the primary catchment's SEIFA score of 944 is 8% below the Perth Average and 6% below the national average.
- 8 The DES report also provided information on the existing licensed premises in the locality surrounding the proposed liquor store. According to the DES report, there is currently nine packaged liquor outlets within a 2km radius of the site which includes a BWS liquor store within the Midland Gate Shopping Centre and two large destination outlets (Dan Murphy's and First Choice) within 800 metres.
- 9 According to the applicant, the low risk features of its proposed manner of trade and the number of positive public interest factors associated with the grant of application outweigh the few potential risks.

The objection

- 10 It was submitted by the objector that the grant of the application is likely to cause undue harm to people, or any group of people, due to the use of liquor. According to the objector:
- the locality already experiences high rates of domestic violence;

- there are at-risk groups in the area;
- the applicant proposes to sell low priced liquor which may increase harm in the community; and
- packaged liquor is already readily available in the locality.

A brief overview of the interventions

The Chief Health Officer

11 The CHO made representations that:

- ALDI Midland intends to provide the public with consistently low-priced alcohol products from within its supermarket;
- 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;
- the risk of harm associated with the ALDI Midland intended manner of trade is exacerbated when introduced into a community that already experiences risk factors for harm and ill-health;
- there is alcohol-related harm occurring in the locality, some of which is higher than the State rate;
- local alcohol and other drug treatment service providers raise concerns regarding ALDI's proposal and the potential impact on clients accessing treatment for their alcohol use; and
- if the application is granted, the imposition of conditions that seek to separate the sale and display of alcohol from the sale and display of general grocery items would be an important harm minimisation approach.

12 It was submitted by the CHO that national and international research demonstrates that the sale of alcohol is price sensitive and a reduction in price can result in an increase in consumption, which can then result in an increase in alcohol-related harm in the community. In this regard, the CHO submitted that the applicant proposes to sell cheap liquor from its stores. For example, there are 22 wines varieties which are priced below \$5.00 and some as low as \$2.89; and mainstream beer is well below the price available from other outlets (Victoria Bitter 10pk at ALDI was offered at \$18.99 compared to a 6pk at Dan Murphy's for \$18.49).

13 A 2011 self-reported Perth consumer survey indicated the convenience of the location of a venue selling low priced alcohol could influence patron decisions to purchase in terms of frequency and quantity, as well as consumption. This survey found that 26% of respondents claimed they would buy more frequently than usual if cheap liquor was available and another 33% claimed they would buy more than they planned if cheap liquor was available. Additionally, 24% claimed they would drink more as a result of a new store opening which provided access to cheaper alcohol.

- 14 The CHO also noted that research indicates the availability of alcohol within a supermarket setting can facilitate increased purchasing, particularly an increase in impulse and unplanned purchasing, with a result of increased consumption and harm.
- 15 With respect to the profile of the locality surrounding the proposed liquor store, the CHO provided the following information:
- between the period 2014/2015 to 2016/2017, there were 1,338 treatment episodes for people residing in the locality at services funded by the Mental Health Commission. Of these treatment episodes, alcohol was identified as the primary drug of concern in almost one in four (23%);
 - the locality is socio-economically disadvantaged. The suburbs of Midland and Midvale have a SEIFA² decile of 1; Middle Swan, Hazelmere and Bellevue have a decile of 3, while Viveash and Woodbridge record a decile of 6;
 - the locality is situated within the Swan Local Government Authority which is ranked as the eighth most disadvantaged LGA in the greater Perth Region;
 - unemployment in the City of Swan (7.2%) is higher than the State rate (6.2%); and
 - median weekly incomes in the suburbs of Midland (\$614), Midvale (\$490), Middle Swan (\$589), Hazelmere (\$529) and Bellevue (\$621) are significantly lower than the State average (\$724).
- 16 The CHO provided data on the rate of alcohol offending in the locality, which indicates that between 1 January 2014 and 31 December 2016 there were 909 reported domestic assaults offences in the locality, of which 25.7% were alcohol related. The rate of alcohol-related domestic assaults per 1,000 persons during this period were:

	2014	2015	2016
Midland	4.34	7.48	7.48
Midvale	11.98	10.92	3.64
Viveash	1.85	0.74	2.21
Middle Swan	3.32	3.96	3.63
Bellevue	0.59	1.75	2.34
Woodbridge	4.50	7.37	6.63
WA State	2.33	2.44	2.55

- 17 A statement was provided by the Manager of the North East Metropolitan Community Alcohol and Drug Service (NEMCADS), who said:

“It is my understanding, and the experience reported by staff, that there are at-risk groups in Midland and the surrounding suburbs that experience levels of disadvantage. This includes a population of people experiencing

² Socio-Economic Index for Areas. The decile is on a scale of 1 to 10, with the lower the decile, the greater the level of disadvantage.

homelessness, some of whom access NEMCADS for alcohol-related services. The suburb of Midland also has supported housing (e.g. Public Housing by The Housing Authority) located near to the proposed ALDI Midland.

Additionally, our service sees clients form a broad range of socio-economic backgrounds; however, the majority of NEMCADS clients tend to demonstrate a lower socio-economic status as well as lower literacy and numeracy rates, and other risk factors including intergenerational trauma and financial hardship.”

- 18 The CHO also submitted that despite the applicant’s claims in its PIA that there will be no external advertising of alcohol at ALDI Midland, the applicant has overt external advertising and promotion of alcohol at a recently opened ALDI store.

The Commissioner

- 19 The Commissioner intervened in the application to provide evidence and data relevant to the locality surrounding the proposed liquor store and submitted that in the circumstances of this application, if it is approved, it would be appropriate to imposed conditions on the licence to assist in minimising the consequential harms and anti-social behaviours attributed to licensed premises and ensure the applicant adheres to its proposed manner of trade.
- 20 Included in the Commissioner’s submission was the following information in respect of the locality:
- alcohol-related domestic assaults for the suburb of Midland for the 2016 calendar year, when calculated per 1,000 persons, were 3 times higher than the corresponding Midland sub-district rate;
 - the rate of alcohol-related domestic assaults for the suburb of Midland was 5 times higher than the metropolitan rate and 3 times higher than the State rate for 2016;
 - alcohol-related domestic violence for the suburb of Midland has risen by 77% from 2014 to 2016. By contrast, for the same period, the metropolitan region recorded a 7% increase and the State rate increased by 11%;
 - alcohol-related non-domestic assaults in the suburb of Midland for the 2016 calendar year were 4 times higher than the Midland sub-district rate, 4.5 times higher than the metropolitan rate and 3.5 times higher than the State rate.
 - from January 2014 to December 2016, police received 1,095 calls for assistance for domestic related matters for the suburb of Midland, while there were a further 1,207 calls for the remainder of the locality;
 - calls for assistance with regard to domestic related incidents for the 2016 calendar year for the suburb of Midland, when calculated per 1,000 persons, was 3.7 times higher than the corresponding metropolitan rate and 3 times higher than the State rate;

- there has been a 38% increase from 2014 to 2016 for call for assistance for domestic violence in the suburb of Midland and a 52% increase in the suburb of Midvale. The Midland/Midvale border is situated approximately 500 metres from the proposed liquor store; and
 - from 2014 to 2016, there was a 115% increase in drivers stopped and charged with drink driving in the suburb of Midland.
- 21 The Commissioner further submitted that the existing rates of alcohol-related harm in the locality are compounded by the fact that the area surrounding the proposed liquor store is socio-economically disadvantaged, particularly the suburbs of Midland, Midvale, Middle Swan and Bellevue. These suburbs all record a low SEIFA ranking and a low Index of Education and Occupation ranking.
- 22 The Commissioner provided evidence on the existing licensed premises in the locality, stating that there are currently 40 such premises, including 6 which are dedicated packaged liquor outlets. Included in these 6 outlets, there is a Dan Murphy's and a First Choice Liquor Super Store both located less than 800 metres from the proposed ALDI liquor store and is a BWS liquor store within the Midland Gate Shopping Centre.
- 23 According to the Commissioner, research has demonstrated a relationship between increased availability of discount liquor and increased levels of alcohol-related harm in the community, and packaged liquor outlets are positively associated with rates of domestic violence.
- 24 It was subsequently submitted by the Commissioner that if the application is granted, trading conditions which minimise the potential risk to the community should be imposed on the licence.

Determination

- 25 The proposed liquor store is to be located within an ALDI supermarket, which will be part of the redeveloped Midland Gate Shopping Centre. The proposed liquor store will comprise a relatively small display area adjacent to a licensed checkout. According to the applicant, the proposed liquor store will principally cater for all the reasonable liquor shopping needs of ALDI supermarket customers. The applicant has submitted a PIA and accompanying reports to support its application.
- 26 Evidence has been presented by the parties which indicates that there is alcohol-related harm occurring in the locality surrounding the proposed liquor store; the locality is socio-economically disadvantaged and there are at-risk groups in the area.
- 27 On a proper construction of the Act, the application must be determined in accordance with the evidence (including notorious facts) submitted by the parties and the criteria

imposed by the Act itself. In this regard, Buss J in *Woolworths v Director of Liquor Licensing*³ set out some of the relevant provisions of the Act:

- the primary objects of the Act are set out in section 5(1) (a), (b) and (c) of the Act;
- by section 5(2), in carrying out its functions under the Act, the licensing authority shall have regard to the primary objects of the Act and to certain secondary objects, which include facilitating the use and development of licensed facilities, reflecting the diversity of the requirements of consumers in the State; ⁴
- by section 5(3), if, in carrying out any of its functions under the Act, the licensing authority considers that there is any inconsistency between the primary objects and the secondary objects, the primary objects take precedence;
- by section 38(2) of the Act, an applicant who makes an application for a liquor store licence must satisfy the licensing authority that the granting of an application is in the public interest;
- the expression 'in the public interest', when used in a statute, imports a discretionary value judgment;⁵
- the factual matters which the licensing authority is bound to take into account, in determining whether it is satisfied that the granting of the application is in the public interest are those relevant to the objects of the Act set out in sections 5(1) and 5(2);
- the factual matters which the Commission is entitled to take into account, in determining whether it is satisfied that the granting of an application is in the public interest are those set out in section 38(4) of the Act; and
- the requirement to have regard to the primary and secondary objects in sections 5(1) and 5(2) is mandatory whereas section 38(4) is permissive.

28 In respect of an objector and intervenor, s 73(10) of the Act states that the burden of establishing the validity of any objection lies on the objector, while an intervenor carries no onus to establish their assertions of fact or opinion.⁶

29 Therefore, the statutory duty imposed on the licensing authority involves two aspects. First, the licensing authority must evaluate the evidence before it and make findings and draw conclusions from the evidence, including by reference, and secondly, the licensing authority must apply the public interest criteria, in accordance with the statutory requirements, to the relevant circumstances of the case before it and in particular, to the findings it has made and the conclusions it has drawn.⁷

30 In evaluating the applicant's evidence, particularly the survey evidence from the Patterson report, together with the notorious fact that in contemporary Australian life one-stop shopping in large suburban shopping centres is of great importance,⁸ I find that the grant

³ [2013] WASCA 227

⁴ s 5(2)(a)

⁵ *O'Sullivan v Farrer* [1989] HCA 61; (1989) 168 CLR 210

⁶ *Re Gull Liquor* (1999) 20 SR (WA) 321.

⁷ [2013] WASCA 227

⁸ [2013] WASCA 227

of the application would promote object 5(1)(c) of the Act. The popularity of the applicant's supermarkets and business model are also factors to be taken into consideration. As noted by Banks-Smith J in *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police*,⁹ catering to the requirements of consumers is not to be considered in isolation and the test under object 5(1)(c) is a broad one.

31 Notwithstanding, the application must also be considered with regard to the other objects of the Act. One of the primary objects of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor.¹⁰ None of the primary objects of the Act take precedence over each other, however, where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case¹¹ and it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.¹²

32 Where object 5(1)(b) is relevant to the determination of an application there are four steps to be undertaken, namely:¹³

- 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.

33 The evidence indicates that:

- Alcohol-related domestic assaults per 1,000 persons in the suburbs of Midland, Midvale, Middle Swan, and Woodbridge are all above the State rate;
- alcohol-related domestic assaults for the suburb of Midland for the 2016 calendar year, when calculated per 1,000 persons, were 3 times higher than the corresponding Midland sub-district rate;
- the rate of alcohol-related domestic assaults for the suburb of Midland was 5 times higher than the metropolitan rate and 3 times higher than the State rate for 2016;
- alcohol-related domestic violence for the suburb of Midland has risen by 77% from 2014 to 2016. By contrast, for the same period, the metropolitan region recorded a 7% increase and the State rate increased by 11%;

⁹ [2017] WASC 88

¹⁰ Object 5(1)(b)

¹¹ *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258

¹² *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356

¹³ *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 per Allanson J

- alcohol-related non-domestic assaults in the suburb of Midland for the 2016 calendar year were 4 times higher than the Midland sub-district rate, 4.5 times higher than the metropolitan rate and 3.5 times higher than the State rate.
- from January 2014 to December 2016, police received 1,095 calls for assistance for domestic related matters for the suburb of Midland, while there were a further 1,207 calls for the remainder of the locality;
- calls for assistance with regard to domestic related incidents for the 2016 calendar year for the suburb of Midland, when calculated per 1,000 persons, was 3.7 times higher than the corresponding metropolitan rate and 3 times higher than the State rate;
- there has been a 38% increase from 2014 to 2016 for call for assistance for domestic violence in the suburb of Midland and a 52% increase in the suburb of Midvale. The Midland/Midvale border is situated approximately 500 metres from the proposed liquor store; and
- from 2014 to 2016, there was a 115% increase in drivers stopped and charged with drink driving in the suburb of Midland.

34 The applicant submitted that the rates of alcohol-related domestic assaults of some suburbs in the locality decreased or remained steady in 2016, however this does not change the fact that even with a decrease in the rates for some suburbs, the rate of offending in most suburbs in the locality remain significantly higher than the State rate and the metropolitan rate. The applicant also submitted that alcohol-related hospitalisations for the City of Swan, which is the local government municipality within which the premises are to be located, was significantly lower than the State rate. The City of Swan covers a large geographic area and the data provided was for the period 2007 to 2011.

35 Based upon the evidence presented, I find that there is a high level of pre-existing alcohol-related harm in the locality surrounding the proposed liquor store, particularly in the suburb of Midland.

36 The evidence also establishes that there are other risk factors present in the locality which are relevant when assessing the vulnerability of the community to the likely negative impacts of alcohol use and the likely degree of harm to result from the grant of the application. This includes:

- most of the locality presently experiences a high level of socio-economic disadvantage, with the suburbs of Midland and Midvale having a SEIFA decile of 1, Hazelmere, Middle Swan and Bellevue a decile of 3, while Viveash and Woodbridge record a decile of 6;
- the Swan Local Government Authority is the eighth most disadvantaged LGA in the greater Perth region;
- the locality experiences below average individual, household and family incomes;
- unemployment in Midland Guildford was 11.5% compared to the Perth rate of 6%;
- across Perth, Midland has the 17th highest unemployment rate of 142 statistical local areas;

- there are significantly more lone person households in the area compared to the State rate;
- there are more separated and divorced persons in the locality compared to the State rate;
- there are more single parent families in the locality compared to the State rate;
- public housing is 6.4% of all private dwellings in the primary area compared to the metropolitan rate which is 2.9%;
- the locality has a high Aboriginal population (4.5%) compared to the metropolitan area (1.5%);
- there are persons in the locality seeking treatment for alcohol-related problems; and
- residents from the locality form part of the major catchment area for the Centre and residents are likely to make regular visits based on proximity and competition.

37 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*¹⁴ 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.”

38 According to the applicant, there is some crime occurring in the locality and Midland is the highest of the suburbs considered, however, the applicant submitted that its safety and security measures will ensure the risk of any crime associated with the new premises will be minimised. It was submitted that in addition to those measure, the likelihood of the liquor store contributing to alcohol-related crime is reduced for the following reasons:

- the small nature of the liquor proposal;
- the location within the confined safety and security of the supermarket, which is situated internally within the Centre;
- the lack of external frontage;
- the location of the liquor store area adjacent to the checkout and therefore under close constant staff surveillance and supervision;
- the lack of refrigeration;
- the simple and open layout of the liquor area;
- close staff surveillance achieved by the layout; and
- installation of CCTV surveillance throughout the supermarket, including the proposed licensed area.

¹⁴ Supra

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- 39 The applicant further submitted that the existing level of harm and ill-health in the Midland locality due to the use of liquor is, on the whole, at a level commonly accepted and expected in the community, which is relatively normal and comparative with other localities. I do not accept that submission. The evidence clearly establishes that the locality experiences high rates of alcohol-related harm, with alcohol-related domestic assaults significantly above the State and metropolitan rates.
- 40 The grant of the application will increase the physical availability of alcohol in the area and introduce consistently lower priced liquor into a community where risk factors are present. The applicant indicates in its PIA that it does not discount products on a daily or weekly basis, but rather prices are maintained at a consistently low level. The applicant's stock list indicates that the many 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 can each be purchased for under \$10. In my view, the grant of the application may put downward pressure on the price of alcohol in the area.
- 41 The applicant acknowledged that Midland itself, and the locality in general, is socio-economically disadvantaged, however it was submitted that other factors in terms of growth and development of the area suggest otherwise. According to the applicant, the Metropolitan Redevelopment Authority (MRA) has invested heavily in the revitalisation of Midland. Whilst there may be a transformation taking place and there have been improvements in some measures of socio-economic disadvantage (i.e. improved income profile), presently the locality still experiences high rates of alcohol-related harm and there remain substantial risk factors. The changing demographics of the community and the introduction of a different offering are relevant matters, but they must be weighed against others factors relevant to the locality surrounding the proposed liquor store.
- 42 The applicant's own evidence is that it is perceived within the community as a cheap supermarket. There is also evidence (the DES report) that the primary catchment area for the Centre includes Midland, a suburb which presently experiences a high rate of alcohol-related harm; social disadvantage; and contains at-risk groups. Residents from this suburb are likely to make regular visits to the Centre based on proximity and competition (the DES report). It is therefore likely, in my view, that at-risk persons will be attracted to the ALDI supermarket and then exposed to the risk of unplanned or opportunistic purchases from the proposed liquor store, which provides consistently low-priced liquor, located immediately adjacent to the checkouts. There is research which indicates that in this environment, people may buy liquor more frequently than usual and consume more liquor than they normally would. Research also demonstrates a relationship between low-cost liquor, consumption and increased alcohol-related harm and packaged liquor is a key driver of harm in the community.
- 43 Although the research referenced by the CHO does not relate directly to the premises the subject of this application, it may nonetheless assist in determining the likelihood that

harm will occur if the application is granted where it is connected by other evidence about the particular local, social, demographic and geographic circumstances of a given case.¹⁵

44 It was submitted by the applicant that the close proximity of liquor stores with supermarkets is already approved and operating in Western Australia and the evidence and submissions of the intervenors is not supported by the evidence as to the experience in the eastern states where the authorities continue to grant ALDI applications. The applicant referenced a statement from the licensing authority in New South Wales where it observed that “the small scale of the proposed licensed area is a mitigating factor.”

45 In my view, there is little utility in these submissions because:

- each application must be considered on its merits;
- the profile of the locality in which the liquor store is to be located and the existing level of alcohol-related harm in the locality are factors to be taken into consideration when determining the merits of the application and the overall public interest. As noted by Wheeler J in *Executive Director Public Health v Lily Creek International & Ors* [2001] WASCA 410, regard must be had to the proved circumstances of the particular area in relation to which the application is made;
- the applicant has failed to provide details of how many of its applications have been refused in New South Wales because of concerns about the potential negative impact that the operation of an ALDI liquor store may have on the local community. As I noted in my decision on ALDI Cloverdale, the licensing authority in New South Wales has refused ALDI applications, notwithstanding any mitigating factors, because it found that the establishment of a new liquor store by ALDI in some locations is likely to contribute to existing alcohol-related problems and anti-social behaviour and the competitively priced liquor to be sold by ALDI will be attractive to persons who abuse packaged liquor; and
- the Liquor Commission has previously observed that “*Whilst comparisons may sometimes be useful it is the actual level of harm or ill-health in the relevant locality that is of significance.*”¹⁶

46 Convenience would appear to be a significant factor for public support for the application, as evidenced by the survey data, however, the Patterson report indicates that the majority of respondents do not purchase their packaged liquor needs when shopping for groceries, notwithstanding the existence of an existing liquor store in the Centre, with most choosing to make a special trip to a walk-in browse outlet. This result is not surprising given the close proximity of two large destination outlets (Dan Murphy’s and First Choice) to the applicant’s proposed liquor store.

47 In LC 18/2015, the Liquor Commission observed at [125] to [129] that:

¹⁵ Per Bell J in *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207

¹⁶ LC 09/2016 and LC 02/2017

“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 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.”

- 48 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. Edelman J in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51) stated:

‘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.’

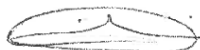
- 49 In my view, the benefits to the community from the grant of the application would be modest. There is already a liquor store in the Centre to cater for the one-stop shopping

requirements of customers of the Centre, including ALDI customers, together with other packaged liquor outlets in reasonable proximity. There are two large destination outlets within 800 metres and most residents in the locality presently purchase their packaged liquor from a walk-in browse outlet. Although the applicant sells some unique products it also sells many mainstream liquor products.

- 50 Although the Midland Gate Shopping Centre has a wide catchment area, the evidence from the DES report is that residents immediately surrounding the Centre are regular and frequent users of the Centre, particularly residents from the suburb of Midland which makes up most of the residential population of the locality. Residents from the suburb of Midland presently experience high rates of alcohol-related domestic and non-domestic violence, social disadvantage and other risk factors.
- 51 The applicant submitted that the low risk features of its proposal will sufficiently mitigate the risk to the community. However, given the circumstances of this case, I do not accept that submission. The consumption of packaged liquor occurs away from the licensed premises and in circumstances beyond the control of the applicant.
- 52 Based on the evidence presented by the parties, I find that the offering of consistently low-priced liquor within the supermarket environment as proposed in this application will be attractive to at-risk persons in the locality and the grant of the application is therefore likely, over time, to contribute to the existing high rate of alcohol-related harm in this community.
- 53 Although the locality may be undergoing some transformation in terms of growth and development, at present, there are still significant risk factors in the area in terms of alcohol-related harm and socio-economic disadvantage. In time, these risk factors may dissipate and it may then be appropriate to grant a further liquor store licence in the area.
- 54 The grant of the application is principally directed to catering to the requirements of ALDI supermarket customers. When I weigh and balance the competing interest in this case, namely the convenience to ALDI customers to be able to purchase packaged liquor while shopping at the ALDI supermarket and to source some unique products, compared to the potential increase in alcohol-related harm within a community which already experiences high rates of harm and social disadvantaged, I find that even a small increase in the risk to this community to be unacceptable.
- 55 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 publicand its content will depend on each particular set of circumstances.”

- 56 In the circumstances of this case, I am of the view that the welfare of the local community should take precedent over the marginal benefits to customers of the ALDI supermarket if the application was approved.
- 57 I find that the applicant has failed to discharge its onus under s 38(2) of the Act and satisfy me that the grant of the application is in the public interest. The application is therefore refused.
- 58 One final matter. The applicant stated in its PIA (paragraph 3.37) that the liquor area will not be visible from and have no presence outside of the ALDI supermarket. Further, the applicant stated that there will be no external access, façade or signage. This is restated at paragraph 3.39 of the PIA, and in the DES report, where it is indicated that one of the key aspects of the ALDI liquor proposal is the absence of any external presence and advertising of the liquor store. However, the evidence from the CHO shows that the applicant appears to have external promotion of its liquor stores contrary to the statements in its PIA. Although the applicant refutes its external advertising contradicts its submissions, I do not share that view. Whilst the applicant's actions may not be a breach of the trading conditions imposed on the various ALDI licences granted to date, this practice is inconsistent with the applicant's submissions and statements in its PIA's that have been lodged to support its applications.
- 59 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.
- 60 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