

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LIMITED

OTHER PARTIES: CHIEF HEALTH OFFICER (INTERVENER)

PREMISES: ALDI MORLEY LIQUOR STORE

PREMISES ADDRESS: GALLERIA SHOPPING CENTRE (CNR WALTER ROAD WEST) 4 COLLIER ROAD, MORLEY

APPLICATION ID: A000222493

MATTER: APPLICATION FOR CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 11 SEPTEMBER 2017

Introduction

- 1 This is an application by ALDI Foods Pty Ltd (the applicant) for the conditional grant of a liquor store licence for premises to be known as ALDI Morley Liquor Store and located at the Galleria Shopping Centre, 4 Collier Road, Morley. The application is made pursuant to ss 47 and 62 of the *Liquor Control Act 1988* (the Act).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing (the Director). There were no objections to the grant of the application, however, pursuant to s 69 of the Act, the Chief Health Officer (CHO) lodged a notice of intervention.
- 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 high-volume liquor jurisdiction which is to act as speedily and with as little formality and technicality as is practicable.¹

Determination

- 4 The applicant seeks to operate a small liquor store as part of a new ALDI supermarket to be established at the Galleria Shopping Centre in Morley. It will be typical of the ALDI liquor store model, in that:
 - there will be a small browse area of about 22m², 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.

¹ Refer s 16(7) of the Act.

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- 5 The applicant submitted a detailed Public Interest Assessment (PIA) to support its application and demonstrate that the grant of the application was in the public interest. In this regard, the PIA provided information on ALDI's business 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 and the low risk features of the proposal. The applicant also submitted a report by Patterson Research Group, who conducted a survey of consumers within the locality.
- 6 According to the applicant's PIA:
- there is no significant stand-out at risk group or sub-community present in the locality;
 - the community living in the locality is not unusual, with most categories of characteristics having results very similar to the State average;
 - the City of Bayswater, being the local government area in which the premises will be located, has an above average SEIFA score²;
 - the rate of alcohol-related hospitalisations is the same as the State average; and
 - the unemployment rate is similar to the State average.
- 7 Overall, it was submitted by the applicant that the locality enjoys an average state of socio-economic health.
- 8 The applicant identified several key low risk elements and features of the application, including:
- the licensed area is small;
 - the bright, open-plan layout;
 - the absence of refrigeration to help avoid impulse buying and impulse drinking;
 - the limited stock range and volume;
 - the absence of bulk quantities of cheap mainstream products;
 - the browse/display area is easily monitored by staff;
 - the clearly defined and demarcated licensed area; and
 - the lack of signage external to the store advertising discounted liquor.
- 9 The Patterson survey indicated good community support for the grant of the application, with 69% of respondents, who have purchased packaged liquor, indicating that they would purchase their packaged requirements at the liquor store if shopping at the supermarket.
- 10 The CHO intervened in the application to highlight the risks associated with the grant of the application and how those risks could be minimised through the imposition of appropriate conditions on the licence. 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;

² Socio-Economic Indexes for Areas.

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- the association of alcohol products with everyday grocery items can lead to increased consumption and harm; and
 - there is a relationship between low cost liquor, consumption and increased alcohol-related harm, and ALDI Morley intends to provide the public with consistently low priced alcohol products; and
 - there are at-risk groups within Morley and the surrounding suburbs who currently experience alcohol-related harm.
- 11 In respect of existing at-risk groups in the locality, the CHO stated that between 1 January 2014 and 31 December 2016, there were 1,471 treatment episodes for people residing in the locality at treatment services funded by the Mental Health Commission. Alcohol was identified as the primary drug of concern in over one in four of these treatment episodes.
- 12 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.
- 13 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 5.³
- 14 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.
- 15 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.
- 16 In considering the evidence presented in the context of the objects of the Act, I find that the grant of the application would promote objects 5(1)(c) and 5(2)(a) of the Act. In respect of the harm minimisation object of the Act, the locality surrounding the proposed liquor store would appear to be typical of most suburbs in the metropolitan area and therefore I am of the view that the grant of the application would not unduly contribute to the existing rate of alcohol-related harm in the area. The SEIFA index for the City of Bayswater is above average.

³ *Woolworths v Director of Liquor Licensing* [2013] WASCA 227.

- 17 I also note that the Liquor Commission expressed the view that some of the concerns raised by the CHO about the integration of alcohol and grocery items could be mitigated through the imposition of appropriate conditions on the licence.⁴ Primarily, this involves a degree of separation between the licensed area and the remainder of the supermarket.
- 18 I am satisfied, based upon the evidence submitted, that the applicant has discharged its onus under s 38(2) and demonstrated that the grant of the application is in the public interest. A liquor store licence is therefore conditionally granted to the applicant subject to the following:
- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
 - (b) compliance with the Local Government Act 1960, Health Act 1911 and any written law relating to the sewerage and drainage of these premises;
 - (c) all work being completed within 12 months in accordance with the plans and specifications dated 8 December 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 **10 September 2018** pursuant to s 62(4)(c) of the Act.
- 19 On confirmation of the conditional grant, the following conditions will be imposed on the licence.

Trading hours

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

Trading conditions

- 1) The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.
- 2) The licensee is prohibited from selling refrigerated liquor products;
- 3) There is to be no external advertising of liquor products on the façade of the licensed premises;
- 4) The browse/display area is to be closed off when not open for trade;
- 5) The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing;
- 6) 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
- 7) The entry/exit point to the licensed area must have a gate.

⁴ LC 09/2017

Modification to Approved Manager Requirement

Pursuant to section 100(2a) of the Act, section 100 of the Act is modified so that an approved manager must be present within the ALDI supermarket store whenever business is conducted under the licence.

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.

- 20 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 21 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 22 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.
- 23 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