

DECISION OF DIRECTOR OF LIQUOR LICENSING

APPLICANT: ALDI FOODS PTY LIMITED

PREMISES: ALDI SOUTHERN RIVER

PREMISES ADDRESS: 428 WARTON ROAD SOUTHERN RIVER

APPLICATION ID: A051874843

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

DATE OF DETERMINATION: 7 JUNE 2018

Introduction

1. On 26 February 2018, ALDI Foods Pty Limited (the applicant) lodged an application for the conditional grant of a liquor store licence in respect of premises situated at 428 Warton Road, Southern River and to be known as Aldi Southern River.
2. The application is made pursuant to ss 47, 62 and 68 of the *Liquor Control Act 1988* (the Act).
3. Pursuant to s 67 of the Act, the application was advertised in accordance with instructions issued by the Director of Liquor Licensing (the Director).
4. No objections were lodged. However, pursuant to s 69 of the Act, the Chief Health Officer (CHO) lodged a notice of intervention.
5. By letter dated 19 April 2018, a document exchange process was initiated between the parties. Each party was afforded the opportunity to lodge any further evidence and submissions to be taken into consideration in the determination of the application.
6. Pursuant to ss 13 and 16 of the Act, the application will be determined on the papers.

Determination

7. In accordance with s 38 of the Act, the onus is on the applicant to satisfy the licensing authority that the grant of the application is in the public interest. In this regard, the licensing authority, however constituted, makes its determination on the balance of probabilities.
8. In considering the public interest, the licensing authority needs to consider both the positive and negative social, economic and health impacts, and exercise a discretionary value judgement as to whether the application should be granted (*Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241).

9. In *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 Tamberlin J said:

The reference to “the public interest” appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.

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, society or the nation and its content will depend on each particular set of circumstances.

10. In determining whether an application should be granted “in the public interest” consideration must be given to the objects of the Act as specified in s 5 of the Act.
11. 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.
12. 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.
13. The licensing authority may also take into consideration the matters set out in s 38(4) of the Act.
14. Pursuant to s 33 of the Act, the licensing authority has an absolute discretion to grant or refuse an application for any reason that the licensing authority considers in the public interest, but must deal with an application on its own merits within the scope of the Act (refer *Woolworths Ltd v Director of liquor Licensing* [2012] WASC; *Palace Securities v Director of Liquor Licensing* (1992) 7 WAR).
15. The applicant seeks the grant of a relatively small browse style liquor store within its existing ALDI supermarket which opened for business on 2 July 2016 at 428 (Lot 346) Warton Road, Southern River. The proposed licensed premises are consistent and typical of the ALDI’s business model as it relates to the sale and supply of packaged liquor, by the applicant, within its supermarkets.

16. In accordance with its business model the applicant's proposed premises will comprise a browse/retail area of approximately 21m² to be located in close proximity to the entrance/exit of the supermarket and the checkout counters. The closest checkout counter to be included as part of the proposed licensed premises for the purpose of carrying out liquor transactions.
17. Similar with its other applications for the grant of liquor store licences, the applicant submitted that it proposes to provide consumers liquor of *"incredibly high quality at impossibly low prices"* through its highly sophisticated business model involving advanced levels of systemisation and organisation designed for optimum efficiency and product control. The liquor store will carry about 95 non-refrigerated liquor products including the applicant's own unique liquor product lines.
18. It was submitted that the proposed liquor service will principally cater for the reasonable shopping requirements of consumers who resort to the ALDI Southern River supermarket with a premium shopping convenience in the terms of One-stop-shopping; One-transaction-shopping; One-trolley-shopping or One-stop-Aldi-shopping.
19. In support of its application the applicant lodged a comprehensive Public Interest Assessment (PIA) in which it outlined its intended manner of trade; a description of the facilities; its intended customer base; and addressed the matters contained in s 38(4) of the Act. The PIA was supported by legal submissions, numerous publications, reports and articles including reports by Patterson Research Group *"Survey Of The Consumer Requirements For Liquor Retailing Within The Locality Of The Proposed ALDI Southern River Store"* (Patterson's survey) and by Deep End Services (Deep End's report) *"Expert report to the Public Interest Assessment"*, together with the appropriate planning approval from the local authority.
20. The Patterson's survey found that 99% of the respondents to the survey indicated that they were aware of the ALDI store in Southern River and that there was a sense of anticipation about the prospect of the store being able to sell packaged liquor. The survey also found that 74% of packaged liquor buyers indicated that if they were shopping in the ALDI Southern River supermarket they would be likely to buy their packaged liquor requirements at the store.
21. The Deep End's report included:

"The locality would appear to have a high number of licences however the area's dense and growing residential base yields a relatively low licence density compared to Perth averages. The area's high growth to the south and east will increase demands. Amherst Village and the existing ALDI store is well placed to service the existing population from its central main road location and the new growth areas which have direct connections into Amherst Village."
22. The CHO intervened in the application and made representations relating to the risks associated with the grant of the application for a liquor store licence. In this regard, the CHO, as intervenor to the application, carries no burden of proof (per Greaves J. *Gull Petroleum (WA) Pty Ltd (1998) LLC No. 13/9*).

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23. The CHO's representations were based on the following:
- ALDI Southern River intends to provide the public 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; and
 - if the licence is granted, the imposition of conditions that separate the sale and display of alcohol from the sale and display of general grocery items would be an important harm minimisation approach.
24. The CHO submitted that there are concerns regarding ALDI's proposal to integrate liquor into the supermarket setting, the intended use of the licensed checkout for both liquor and non-liquor items and the visibility of alcohol products from the unlicensed area. It was also submitted that these features can impact on community attitudes towards alcohol as a normal, everyday grocery item, and subsequently impact on purchasing and drinking behaviours.
25. The CHO further submitted that if the licence is granted, trading conditions largely consistent with the conditions imposed by the Liquor Commission of Western Australian (the Commission) in respect of ALDI Harrisdale, should be imposed for the purpose of minimising the potential risks of harm and ill-health the application presents.
26. In considering the information presented, I find that the applicant has discharged its onus under s 38(2) of the Act and that the grant of the application would in keeping with the object contained in s 5(1)(c) of the Act and in the public interest.
27. In respect of the harm minimisation object of the Act, there is no evidence before me, in respect of the locality in which the proposed premises is to be situated to consider whether the grant of the application would result in an unacceptable increase in the levels of alcohol-related harm in the locality.
28. In respect of trading conditions which may be imposed, I acknowledge that s 33(2) of the Act requires that each application must be considered on its own merits and I am therefore not bound to adhere to and impose the same trading conditions as those imposed on the applicant in respect of its other liquor stores, particularly the trading conditions imposed by the Commission in respect of ALDI Harrisdale.
29. I also acknowledge the issues surrounding the interpretation and the implementation of the applicant's current trading conditions at its Harrisdale store. Therefore, I am of the view that it would not be prudent, in this matter, to depart to far from the conditions and intention of the Commission as set out in its ALDI Harrisdale decision LC 12/2018, because to do so would result in an inconsistent approach, but moreover may cause further confusion within the applicant's business model in WA, the public and to the regulatory authorities.

30. However, the intention of the Commission is very clear regarding the use of the licensed check-out counter to be used only for the sale and supply of liquor or the sale and supply of liquor with other non-liquor products, and not for the sale of non-liquor products only. Accordingly, a condition will be imposed to ensure that the licensed check-out counter is used primarily for the sale and supply of liquor.
31. Therefore, as I am satisfied that the applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted, the application for a liquor store licence is conditionally granted conditions as follows:

CONDITIONAL GRANT

- (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 22 February 2018;
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements dated 23 May 2018 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;
- (f) the applicant seeking confirmation of the grant on or before **6 June 2019** pursuant to s 62(4)(c) of the Act;

WHEN THE LICENCE COMMENCES OPERATION IT WILL BE SUBJECT TO THE FOLLOWING CONDITIONS: -

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 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.
6. The entry/exit point to the licensed area must have a gate.
7. The licensed checkout can only be used by people purchasing liquor (without or in conjunction with non-liquor products).
8. The licensee is to have and maintain a closed-circuit television video (CCTV) surveillance system, in accordance with the policies of the Director.

MODIFICATION TO APPROVED MANAGER REQUIREMENT

Pursuant to s 100(2a) of the Act, s 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 has lodged a copy of the 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.

LICENCE FEES

Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the issue of the licence.

32. Pursuant to s 116(3) of the Act, the premises' name "ALDI Southern River" is approved. The licensee, on confirmation of this conditional grant, shall not subsequently conduct business at the licensed premises under any other name, without the prior approval of the Director of Liquor Licensing.
33. 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.
34. This matter has been determined by me under delegation pursuant to s 15 of the Act.

**TRADING MAY NOT COMMENCE UNDER THIS LICENCE
WITHOUT THE PRIOR WRITTEN APPROVAL OF THIS OFFICE.**



Eric Romato
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING