

## DECISION OF DIRECTOR OF LIQUOR LICENSING

**APPLICANT:** ALDI FOODS PTY LIMITED

**OTHER PARTIES:** CHIEF HEALTH OFFICER (INTERVENOR)

**PREMISES:** ALDI WAIKIKI LIQUOR STORE

**PREMISES ADDRESS:** WAIKIKI VILLAGE SHOPPING CENTRE, CNR READ STREET & GNANGARA DRIVE, WAIKIKI

**APPLICATION ID:** A000243289

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

**DATE OF DETERMINATION:** 19 APRIL 2018

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### Introduction

- 1 ALDI Foods Pty Ltd (the applicant) has lodged an application for the conditional grant of a liquor store licence for premises to be located in the Waikiki Village Shopping Centre, on the corner of Read Street and Gnanagara Drive, Waikiki and to be known as ALDI Waikiki. 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. There were no objections to the application however, the Chief Health Officer (CHO), pursuant to s 69 of the Act, 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.<sup>1</sup>

### Determination

- 4 The ALDI Waikiki supermarket opened in October 2016 and the applicant now seeks to establish a small liquor store to complement the supermarket. The proposed liquor store will be a separate area within the supermarket and will have the following key features:
  - there will be a small browse area of about 21m<sup>2</sup>, 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 and discharge its onus under s 38 of the Act, the applicant lodged the following documents:

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

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- a detailed Public Interest Assessment (PIA);
  - a Locality Report prepared by Deep End Services; and
  - a Survey of Consumer Requirements prepared by Patterson Research Group.
- 6 The CHO intervened in the application to make representations regarding the risks of alcohol-related harm specific to the application, and how those risks could be minimised.
- 7 Submissions were made by the CHO on the following matters:
- ALDI Waikiki 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 Waikiki intended manner of trade is exacerbated when introduced into a community that already experiences risk factors for harm and ill-health; and
  - local alcohol and other drug treatment service providers have raise concerns regarding ALDI's proposal and the potential impact on clients accessing treatment for their alcohol use.
- 8 Based on the evidence presented in the intervention, it was submitted by the CHO that if the application is granted, conditions which separate the alcohol from the general grocery items and shopping areas would be an important harm minimisation approach.
- 9 The onus falls upon the applicant to satisfy the licensing authority that the grant of the application is in the public interest.<sup>2</sup> In determining whether the grant of the application is 'in the public interest', the factual matters which I am bound to consider are those relevant to the primary and secondary objects of the Act, as set out in s 5.<sup>3</sup>
- 10 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.
- 11 The secondary objects of the Act are:

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

<sup>3</sup> *Woolworths v Director of Liquor Licensing* [2013] WASCA 227.

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- 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.
- 12 The evidence presented by the CHO indicates that there are several risk factors associated with the local community, namely:
- The locality is socio-economically disadvantaged, with the suburb of Waikiki having a SEIFA<sup>4</sup> index of 4;
  - In the period 2014/15 to 2016/17, there were 1,201 treatment episodes for people residing in the suburbs of Waikiki, Safety Bay, Cooloongup and Warnbro at treatment services funded by the Mental Health Commission, of which, alcohol was identified as the primary drug of concern in almost one in three (33%, n = 397); and
  - The locality experiences a high rate of unemployment and the median individual income is less than the State average.
- 13 However, I also note that alcohol-related hospitalisations in Rockingham is lower than the State rate and there is no evidence that alcohol-related offending in the area is above what might commonly be accepted in the community. There is no evidence that the area immediately surrounding the proposed liquor store is a hotspot for crime and anti-social behaviour.
- 14 When I consider the evidence presented by the applicant 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. The Patterson Report indicates good support from the local community for the grant of the application, with 79% of packaged liquor buyers reporting that if they were shopping in the ALDI Waikiki supermarket and packaged liquor was available, they would buy their packaged liquor requirements from the proposed liquor store.
- 15 Although there are some risk factors evident in the local community, when I weigh and balance the competing interests in this case, including the nature and scale of the business to be conducted under the licence and the applicant's management practices, I am of the view that the grant of the application will not cause undue harm or ill-health in this community due to the use of liquor.
- 16 I am therefore satisfied 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;

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<sup>4</sup> Australian Bureau of Statistics - Socio-economic Indexes for Areas

- (b) compliance with the *Local Government Act 1995, Health (Miscellaneous Provisions) 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 8 August 2017.
  - (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 **18 April 2019** pursuant to s 62(4)(c) of the Act.
- 17 In ALDI Harrisdale<sup>5</sup>, the Liquor Commission noted the concerns raised by the CHO about the integration of alcohol and grocery items and imposed a condition on the licence requiring the separation of the liquor area from the food/grocery area by a barricading of non-see-through material over two metres in height. This provides a degree of separation between the licensed area and the remainder of the supermarket. It is appropriate that a similar condition is imposed on this licence, together with other conditions imposed by the Commission in the Harrisdale application.
- 18 Therefore, 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 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.

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<sup>5</sup> 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.

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