



Mr Grant Cusack
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6 May 2019

Dear Mr Cusack

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| Application No. | 1-6258780014 |
| NCAT No. | 2018/00191151 |
| Applicant | ALDI Foods Pty Limited |
| Application for | Removal of a packaged liquor licence |
| Licence number | LIQP770016534 |
| Current licence name | ALDI Gosford |
| Current licensed premises | Shop 242-252 Imperial Shopping Centre 171 Mann Street GOSFORD NSW 2250 |
| Proposed licence name | ALDI Umina |
| Proposed licensed premises | 310 Trafalgar Avenue UMINA BEACH NSW 2257 |
| Proposed trading hours | Monday to Wednesday, Fridays and Saturdays 8:30 am – 7:00 pm Thursday 8:30 am – 8:00 pm Sunday 10:00 am – 7:00 pm |

**Order by the NSW Civil & Administrative Tribunal in ALDI Foods Pty Ltd v ILGA
Application under *Liquor Act 2007* for the removal of a packaged liquor licence –
ALDI Umina**

As you are aware, on 14 March 2018 the Independent Liquor and Gaming Authority refused application number 1-6258780014 (“Application”) for the removal of a packaged liquor licence to the premises at 310 Trafalgar Avenue, Umina Beach (“Proposed Premises”), to be operated as ALDI Umina (“Original Decision”).

On 21 March 2019, the NSW Civil & Administrative Tribunal (“NCAT”) made an order setting aside the Original Decision, approving the Application, and directing the an agreed form of licence conditions to be filed with NCAT within 21 days of the order.

On 30 April 2019 the following licence conditions, and an updated premises plan for the Proposed Premises, were filed with NCAT:

1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 2:30 AM and 8:30 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Restricted trading and NYE (std)
Retail Sales
Good Friday Not permitted
December 24th Normal trading Monday to Saturday
8:00 AM to 10:00 PM Sunday
Christmas Day Not permitted
December 31st Normal trading
3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from

the information contained in the Community Impact Statement, application and other information submitted in the process of removing this licence to the premises at 310 Trafalgar Avenue, Umina Beach.

4. The premises is to be operated at all times in accordance with the ALDI Management Policies and Strategies and House Policy documents, as submitted to the Independent Liquor and Gaming Authority (“the Authority”) in support of the licence application and as may be varied from time to time after consultation with the Authority. A copy of these documents is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Authority.
5. The liquor sales area must be adequately defined from the rest of the supermarket in accordance with the premises plan endorsed by the NSW Civil & Administrative Tribunal on 30 April 2019, or any premises plan subsequently approved by the Independent Liquor and Gaming Authority.
6. The licensee or its representative must join and be an active participant in the local liquor accord.
7. The licensee will not sell refrigerated liquor products from the licensed premises.
8. Closed-circuit television system
 - 1) The licensee must maintain a closed-circuit television (CCTV) system at the supermarket/general store in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the supermarket/general store is required to close,
 - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
 - (c) any recorded image must specify the time and date of the recorded image,
 - (d) the system’s cameras must cover the following areas:
 - (i) all entry and exit points to the supermarket/general store, and
 - (ii) all publicly accessible areas (other than toilets) within the licensed premises.
 - 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

These conditions will replace the conditions currently attached to the licence the subject of the Application (LIQP770016534), when the licence is removed to the Proposed Premises.

A copy of the NCAT order is attached to this letter.

Removal of the packaged liquor licence

The subject licence LIQP770016534 is not to be exercised at 310 Trafalgar Avenue, Umina Beach, unless and until Liquor & Gaming NSW has been provided with evidence that the proposed premises is complete and ready to trade.

Trading on a Sunday that falls on 24 December

Please note that in the case of any Sunday that falls on 24 December, the 6-hour closure period overrides the statutory provision that would otherwise allow the licence to trade from 8:00 AM. In accordance with the 6-hour closure period for the current licence, the Premises must not trade earlier than 8:30 AM.

If you have any questions, please contact the case manager at andrew.whitehead@liquorandgaming.nsw.gov.au.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', enclosed in a thin black rectangular border.

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority



Mr Grant Cusack
Hatzis Cusack Lawyers
gc@hatziscusack.com.au

22 May 2018

Dear Mr Cusack

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|---|---|
| Applicant | ALDI Foods Pty Ltd |
| Application No. | 1-6258780014 |
| Application for Licence name | Removal of a Packaged Liquor Licence ALDI Gosford |
| Licensed Premises (current) | Shop 242-252 Imperial Shopping Centre 171 Mann Street GOSFORD NSW 2250 |
| Proposed premises | 310 Trafalgar Avenue UMINA BEACH NSW 2257 |
| Proposed Trading hours | Monday to Wednesday, Fridays and Saturdays 8:30am – 7:00pm Thursday 8:30am – 8:00pm Sunday 10:00am – 7:00pm |
| Issue | Whether to grant the removal of a packaged liquor licence |
| Legislation | Sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i> |

**Decision of the Independent Liquor and Gaming Authority
Application for the removal of a packaged liquor licence – ALDI Umina**

The Independent Liquor and Gaming Authority considered the Applicant's application for the removal of a packaged liquor licence at its meeting on 14 March 2018 and, pursuant to section 59 of the *Liquor Act 2007*, decided to **refuse** the removal application.

A statement of reasons for this decision is attached at the end of this letter.

If you have any enquiries about this letter, please contact the case manager via email to andrew.whitehead@liquorandgaming.nsw.gov.au.

Yours faithfully

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 7 August 2017, ALDI Foods Pty Ltd (“Applicant”) lodged an application (“Application”) with Liquor and Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought the granting of the removal of a packaged liquor licence (“Licence”) from the premises at Shop 242-252 Imperial Shopping Centre, 171 Mann Street Gosford, NSW, 2250 (“Premises”) to 310 Trafalgar Avenue, Umina Beach, NSW, 2257 (“Proposed Premises”).
2. The Authority considered the Application at its meeting on 14 March 2018 and decided to refuse the removal of the packaged liquor licence to the Proposed Premises under section 59 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the Act, and relevant provisions of the *Liquor Regulation 2008* (“Regulation”).

Material considered by the Authority

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with its Guideline 6, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
7. A list of the material considered by the Authority is set out in the Schedule.

Legislative framework

8. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations, needs and aspirations of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in exercising its powers under the Act, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Removal of liquor licence

11. Section 59 of the Act provides the legal requirements regarding the removal of a licence to another premises and requires that such application be dealt with and determined as if it were an application for the granting of a new licence.
12. Section 59 of the Act provides that the Authority must not approve the removal application unless it is satisfied that practices will be in place following the removal and remain in place to reasonably ensure the responsible service of alcohol and to prevent intoxication on the premises to which the licence is proposed to be removed.

Trading hours and 6-hour closure period

13. Section 12 of the Act sets out the standard trading period for various types of liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

Minimum procedural requirements

14. Section 40 of the Act prescribes the minimum procedural requirements for a liquor licence application to be validly made to the Authority.

Fit and proper person, responsible service of alcohol, and development consent

15. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:

- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
- b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
- c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

16. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.

17. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter before it.

Provisions specific to a packaged liquor licence

18. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.

19. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.

20. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.

21. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

Key findings

22. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

Validity, procedural and trading hour requirements

23. The Authority is satisfied on the material before it that:

- a) the Application has been validly made and meets the procedural requirements under sections 40 and 59 of the Act,
- b) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A, 12 and 29 of the Act in respect of trading and 6-hour closure periods,
- c) if the Application were to be granted, liquor would be sold and supplied in a separate liquor sales area at the Proposed Premises, and in accordance with the authorisation conferred by a packaged liquor licence as required by sections 29 and 30 of the Act, and
- d) section 31 of the Act does not apply to the Application as the Proposed Premises is not intended to operate as is contemplated by the section.

Fit and proper person, responsible service of alcohol, and development consent

24. Pursuant to sections 45 and 59 of the Act, the Authority is satisfied that if the Application were to be approved, practices will be in place to ensure the responsible serving of alcohol. In making this finding the Authority has had regard to the material before it, including the ALDI Management Policies & Strategies and House Policy documents, and the conditions to be imposed on the licence if the Application were to be granted.
25. The Authority is also satisfied that, for the purposes of section 45 of the Act:
- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, and
 - b) the requisite development consent at the Proposed Premises is in force, based on the Notice of Determination issued by Gosford City Council on 10 March 2009.

Community impact statement

26. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Proposed Premises on the local and broader communities.
27. For the purpose of this decision and consistent with its position in Guideline 6, the Authority is satisfied that the relevant "local community" is the community within the suburb of Umina Beach, and the relevant "broader community" comprises Central Coast Local Government Area ("LGA").

Positive social impacts

28. The Authority accepts the Applicant's contention that ALDI is an experienced operator of many packaged liquor licences, each of which conforms to the business model outlined in the Application.
29. The Authority is satisfied that if the Application were granted, the Proposed Premises would be a small scale packaged liquor facility that would be wholly located within the ALDI Supermarket and only accessible by customers of the supermarket, and that the proposed trading hours would be less than the standard hours permitted under the Act.
30. The Authority has had regard to the evidence before it of considerable support for the Application, including 19 letters of support from local members of the community, two email submissions and a petition containing approximately 448 signatures. The Authority accepts that:
- a) some members of the local community expect to be able to purchase liquor products at the same time as purchasing grocery items, and
 - b) some of ALDI's customers would prefer to purchase ALDI's own-branded products, including liquor products.
31. The Authority accepts the Applicant's claim that granting the Application would provide an additional measure of convenience to customers at the Proposed Premises who wish to purchase liquor items along with their grocery items. However, any additional benefit is somewhat limited, given that residents of Umina Beach can already access grocery and liquor products together at the existing Coles Supermarket and Umina Foodtown, each of which offers an associated packaged liquor facility.
32. The benefit of increased convenience is further reduced on the basis of the small size of the Proposed Premises. A smaller packaged liquor facility is less likely to carry a comprehensive range of liquor products, meaning that customers of the ALDI supermarket might still prefer to shop at any one of the number of packaged liquor facilities located in Umina Beach.
33. The Authority is not persuaded by the Applicant's suggestion that one of the existing packaged liquor licences in the area be excluded from the density calculations because it is a restricted

operation confined to selling liquor by means of taking orders by telephone or by facsimile, or mail order or through an internet site. The same limitations also exist in respect of an unknown number of the many packaged liquor licences located across NSW, and are not accounted for in the calculation of the density of packaged liquor licences per 100,000 of the state's population.

34. Notwithstanding the above, the Authority accepts that the local and broader communities have lower than average rates per 100,000 of population of packaged liquor licences when compared to other localities in NSW.

Negative social impact

35. The Authority notes from the BOCSAR data that, for the year ending September 2017, the Proposed Premises was located within low density hotspots for incidents of alcohol-related assault and non-domestic assault, but was within a medium-density hotspot for incidents of domestic assault and a high-density hotspot for incidents of malicious damage to property.
36. The Authority is troubled by the elevated rates of alcohol-related assault (both domestic and non-domestic) and incidents of malicious damage to property for both the suburb and LGA for the same period, each of which was well above the corresponding NSW figures, indicating that a significant degree of alcohol-related harm is currently being experienced within the local and broader communities.
37. The Authority is also concerned by the relevant HealthStats data relating to alcohol-attributable deaths and hospitalisations, which suggests that members of the broader community, as represented by the former LGAs of Gosford and Wyong, are experiencing alcohol-related health issues generally at a higher than average rate, although notes that the former Wyong LGA recorded a smoothed standardised separation ratio that was slightly less than the NSW average.
38. The Authority is persuaded by the submission of NSW Police which suggests that granting the Application would be likely to result in an increase in certain types of crime and would thus be detrimental to the social impact and wellbeing of the local and broader communities, particularly given that the objective data detailed above adds weight to the concerns raised.
39. The Authority notes the two submissions received from members of the public who oppose the Application, although it does not share the view that the suburb would be overprovided for in respect of packaged liquor were it to grant the Application.
40. The Authority notes the submission provided by the Applicant in response to the objections received, which is supported by reports from two private consultants, however remains concerned by the suburb's high rates of alcohol-related crime, the LGA's unfavourable health statistics and the perspective of NSW Police.
41. The Authority considers that it is likely that any liquor that were to be sold or supplied at the Proposed Premises would contribute to the prevailing concerning levels of alcohol-related assault, malicious damage to property and alcohol-related health harms in the local and broader communities.
42. The Authority has also had regard to the ABS Socio Economic Indexes For Areas (SEIFA) data sourced from the 2011 Census for the suburb of Umina Beach and former Gosford and Wyong LGAs, which provides a mixed picture.
43. The former Gosford LGA ranked in the 8th decile (with the 10th decile being the most advantaged) in comparison to other local government areas in NSW, whilst the former Wyong LGA and Umina Beach suburb ranked in the 4th and 3rd deciles respectively. The Authority notes that this data is seven years old, but is nonetheless concerned by this indication of disadvantage at the local level.

44. The Authority is not satisfied that the above risks would be adequately mitigated by the imposition of special licence conditions or by the Applicant's adherence to the "Management Policies and Strategies" and "House Policy" documents lodged with the Application.

Overall social impact

45. The legislative test under section 48(5) of the Act requires the Authority to be satisfied that the overall social impact of granting the Application will not be detrimental to the well-being of the local or broader community.

46. Having considered the positive and negative social impacts that are likely to flow from granting the Application, the Authority is not satisfied on the material before it that the overall social impact of granting the Application will not be detrimental to the well-being of the local and broader communities.

47. Accordingly, the Authority has decided to refuse the Application under section 59 of the Act.



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

Schedule

Material considered by the Authority

1. ABS SEIFA data based on the 2011 Census ranking Umina Beach and the Local Government Area of Gosford and Wyong on the Index of Relative Socio-economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol attributable deaths for the Gosford and Wyong Local Government Area for the period between 2001-02 and 2012-13.
3. HealthStats NSW data showing alcohol attributable hospitalisations for the Gosford and Wyong Local Government Area for the period between 2001-03 and 2012-13.
4. Notice of Determination No. 36075/2008 issued by Gosford City Council, dated 10 March 2009.
5. Statement of reasons in relation to the removal of a packaged liquor licence lodged in July 2012.
6. Proposed Premises plan dated 31 May 2017 indicating the proposed liquor sales area.
7. ASIC Current Organisation Extracts for ALDI PTY LTD ACN 086 493 950 and ALDI FOODS PTY LTD ACN 086 210 139, dated 12 May 2017.
8. BOCSAR crime maps for the year to September 2017, showing the Premises' and Proposed Premises' location relative to hotspots for alcohol related assault, domestic assault, non-domestic assault and malicious damage to property.
9. NSW crime statistics for the two years to September 2017, published by BOCSAR, on incidents of alcohol related assault (domestic and non-domestic) and malicious damage to property in the LGA and Gosford and Umina Beach suburbs.
10. Email from Aboriginal Affairs, Department of Education NSW, dated 16 June 2017, in relation to the Application.
11. Email from Ms Gloria Mealia, dated 5 June 2017, in relation to the Application.
12. Email from Mr Robert Newton and Mr John Cashin, dated 7 June 2017, in relation to the Application.
13. Email from Mrs Sybil and Mr Campbell Ker, dated 8 June 2017, in relation to the Application.
14. Email from Mr Joe Marin, dated 26 June 2017, in relation to the Application.
15. Completed Category B CIS form, signed and dated 3 August 2017, and relevant additional information prepared by the Applicant's representative.
16. Notice to Local Consent Authority Notice, Public Consultation Site Notice and Notice to Police, dated 3 August 2017.
17. Completed application for removal of a packaged liquor licence, lodged on 7 August 2017.
18. Submission from Central Coast Council, dated 11 August 2017, in relation to the Application.
19. Submission from NSW Police, dated 5 September 2017, in relation to the Application.
20. Submission from Endeavour Drinks Group, dated 4 September 2017, in relation to the Application.
21. 19 signed letters from residents of the local community, dated 15 November 2017, in relation to the Application
22. Petition signed by approximately 448 ALDI customers, undated.
23. Liquor licensing records from L&GNSW as at 25 February 2018 listing the details of all liquor licences in the Central Coast Council LGA, and setting out the density of packaged liquor licences in Umina Beach, Gosford, the LGA and NSW.
24. Certification of Advertising Application signed by Ms Lisa Rafidi and Mr Grant Cusack, dated 13 and 12 February 2018.
25. Submission prepared by the Applicant's representative, dated 13 February 2018, in response to the submissions received in relation to the Application and supporting information.

26. Google map indicating the relative location of the Premises and Proposed Premises location, extracted 28 February 2018.
27. ALDI Liquor Management Policies and Strategies document and House Policy for the responsible service of liquor.