



Mr Grant Cusack
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Dear Mr Cusack

**Application for a Packaged Liquor Licence
ALDI Byron Bay**

I refer to an application made by your client, ALDI Foods Pty Limited, to the Independent Liquor and Gaming Authority on 21 April 2015 seeking the grant of a packaged liquor licence with respect to premises located at the corner of Byron Street and Fletcher Street, Byron Bay, trading as "ALDI Byron Bay".

On 13 April 2016, after careful consideration of the Application and all submissions and other information provided in relation to the Application, the Authority decided pursuant to section 45 of the *Liquor Act 2007* to **refuse** the Application. This decision was advised to you informally in an email from licensing staff dated 15 April 2016.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons for those types of decision prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. This letter attaches the Authority's reasons for decision, prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

If you have any questions about this letter, please contact the case manager, Ms Santina Causa via email at santina.causa@ilga.nsw.gov.au.

Yours faithfully

DB Armati
Deputy Chairperson
for and on behalf of the **Independent Liquor and Gaming Authority**

31 May 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 21 April 2015, the Independent Liquor and Gaming Authority (Authority) received an application (Application) lodged by Hatzis Cusack Lawyers on behalf of ALDI Foods Pty Limited (Applicant).
2. The Application seeks the grant of a new packaged liquor licence, within the meaning of section 29 of the *Liquor Act 2007* (Act), for proposed licensed premises within ALDI Supermarket Byron Bay, located at the corner of Byron and Fletcher Streets, Byron Bay (Premises).
3. The proposed premises licensed area is described as occupying "less than 45sqm" and the proposed amended licensed trading hours are as follows:

Monday to Wednesday	8:30am – 8:00pm
Thursday	8:30am – 9:00pm
Friday	8:30am – 8:00pm
Saturday	8:00am – 6:00pm
Sunday	10:00am – 6:00pm.
4. The Application is accompanied by a separate document entitled "Additional Information – change 6-hour closure period", that seeks to vary the 6-hour daily closure period required by section 11A of the Act from the usual period of 4:00am to 10:00am to instead be fixed at between 2:00am and 8:00am, to accommodate the trading hours of the supermarket business operating at the Premises.

MATERIAL BEFORE THE AUTHORITY

5. Application Form filed on 21 April 2015 signed by Hatzis Cusack lawyers on behalf of the Applicant. The form notes that the Premises Owner (the owner of the freehold upon which the licensed business will operate) is Byron Hotel Pty Limited, while the proposed business owner is ALDI Pty Limited. The form states that the Applicant seeks a daily closure period for the purposes of section 11A of the Act at between 2:00am and 8:00am.
6. Community Impact Statement (CIS) accompanying the Application filed with the Authority on 21 April 2015: In this document, the Applicant states that the liquor sales area in the Premises will occupy a "small section" of the existing ALDI Supermarket comprising "only approximately 32 square metres"; that the liquor sales area will be "clearly defined including by way of partitioning"; that liquor sold will principally comprise a "limited range of ALDI branded products" as well as a small selection on non-ALDI branded products "on occasion" for "a limited time until sold out"; and that "it is not proposed that liquor products will be sold refrigerated".
7. The Applicant submits that on the material provided with the Application, the Authority can be satisfied "on balance" that the "overall social impact in granting the application will not be detrimental to the well-being of the local or broader community".
8. The Applicant defines the "local community" as comprising the suburbs of Byron Bay, Suffolk Park, Broken Head and Ewingsdale, while the "broader community" is the Byron Local Government Area (LGA).

9. The various contentions and submissions made by the Applicant with regard to the overall social impact of granting the Application are discussed in further detail below.
10. Plan of the proposed licensed premises: being a diagram of ALDI Byron Bay Supermarket with the proposed licensed area outlined in red, comprising a small section of the overall plan, located inside the supermarket with one entry/exit point and no direct street access.
11. *Additional Information – 6-hour closure period* accompanying the Application filed with the Authority on 21 April 2015: In this 5-page document the Applicant makes submissions (in the standard terms used for previous applications made by the Applicant for packaged liquor licences) on the proposed 6-hour closure period, the proposed mode of operation of the liquor store, what the Applicant contends are the "demonstrated or likely needs of patrons", the "interests of the local community towards the proposal", the "need to minimise harm associated with misuse and abuse of liquor", the "need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor", the "need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life" and "granting of previous similar applications by the Authority".
12. This submission also explains why the Applicant has sought variation of the usual 6-hour closure period for this licensed business and why it is in the public interest to facilitate the earlier opening hours proposed. The Applicant states that:
 - a) the Premises "will only be very small", sell a "limited range of liquor" and have "less" trading hours than the standard hours permitted by the Act
 - b) adequate responsible service of alcohol (RSA) and other security measures will be in place at the Premises
 - c) the ability to open prior to 10:00am is required to "meet the needs, demands and expectations" of those members of the local community who attend at the supermarket earlier in the morning to purchase their groceries and will also provide these customers with the "added convenience" of being able to purchase "their liquor needs"
 - d) the 6-hour closure period in the legislation was intended to "reduce alcohol-related violence in NSW, particularly during the early hours of the morning" and "was not" intended to prevent liquor stores from opening prior to 10:00am
 - e) the Authority has granted "a number of applications relating to packaged liquor licences where the sale of liquor was permitted prior to 10:00am"
 - f) ALDI operates over 120 licensed Supermarkets across Victoria, the ACT and NSW and "when granting those Applications, the Authority approved a shutdown period similar to that being sought" in respect of this Application.
13. *Additional Information – Application and Community Impact Statement* accompanying the Application filed with the Authority on 21 April 2015: In this 14-page document, the Applicant makes detailed submissions with respect to the operation of the proposed new licensed premises, the practices of licensed ALDI supermarkets generally, and the characteristics of the local and broader community in which the Premises is to be located. The Applicant's submissions regarding the overall social impact of granting the Application are discussed in further detail below.
14. *Conditions Consented to by the Applicant Being Endorsed on the Licence* accompanying the Application filed with the Authority on 21 April 2015: This document sets out seven conditions to which the Applicant consents being imposed upon the licence if the Application is granted.

15. These conditions relate to the overall social impact of the business conducted pursuant to the licence not exceeding that disclosed in the Application and CIS; the need for a manager of the licence to be approved by the Authority prior to the licence being exercised; compliance with the Management Policies and Strategies and House Policy documents lodged with the Authority; the licensee ensuring that the liquor sales area is adequately separated from the rest of the supermarket by a fixed, solid and permanent barrier; the need to provide evidence that the Premises are "ready to trade" prior to the licence being exercised; the licensee or its representative participating actively in the local liquor accord; and the prohibition on the sale of refrigerated liquor products at the Premises.
16. *Management Policies and Strategies – ALDI Liquor NSW* accompanying the Application filed with the Authority on 21 April 2015: The Applicant, in this 2-page document, states its commitment to ensuring that there are "adequate management practices and policies in place to minimise and reduce the likelihood of any alcohol related harms" in the local community.
17. The Applicant states that it is "committed to working in collaboration with the relevant liquor authorities, Police, Local Government and other related bodies". The document sets out various aspects of the proposed business including "operation within approved trading hours", "staffing levels", "staff training", "co-operation with various interested persons", "development of other strategies to assist in the minimisation of harm relating to the consumption of Liquor", and "CCTV".
18. The Applicant further states that:
 - a) the licensed business will only trade within the hours specified on the licence
 - b) adequate staff are to be in attendance during all trading hours
 - c) staff "undergo an induction course and receive adequate training"
 - d) there is no sale of alcohol to persons under the age of 18 years
 - e) where a customer is suspected of being under the age of 25 years, proof of age will be requested
 - f) liquor is not to be consumed on the licensed Premises other than by way of tastings authorised by the liquor laws
 - g) management will "develop links with the local community so that management is aware of relevant events and issues"
 - h) management will establish a "close working relationship with the Local Police"
 - i) ALDI will "continue to consider and actively promote" such initiatives as DrinkWise
 - j) a CCTV surveillance system is to be installed covering the licensed area.
19. *ALDI Liquor NSW House Policy* accompanying the Application filed with the Authority on 21 April 2015: This 2-page internal business policy document sets out the practices to be implemented by the Applicant on the Premises so as to "minimise the likelihood of negative impacts and ensure compliance with the liquor laws". The *House Policy* deals with the measures to address the prevention of liquor sales to persons under 18, prevention of liquor sales to intoxicated persons, prevention of consumption of liquor on the Premises, responsible service of alcohol training for staff, mandatory signage on the Premises, and use of CCTV.
20. The Applicant states in this document that the licensed business will comply with this policy and ensure that "persons under the age of 18 years do not purchase liquor"; that intoxicated persons will be refused service; that liquor is not to be consumed on the licensed Premises; that all required signage is displayed within the licensed area; that all staff involved in the sale and supply of liquor "receive training in the responsible service of alcohol"; and that "only persons over the age of 18 years sell or supply liquor".

21. The *House Policy* also specified that any person who appears to be under the age of 25 will be asked to produce identification before being supplied with liquor; that a CCTV system will be installed; that staff will be trained as to what features to check when presented with proof of age identification; and that staff will be provided with any intoxication guidelines released by the Authority.
22. Google Maps and images of the Premises: including a landscape-oriented photograph showing the Premises, the *Nomads* backpacker hostel, and the Great Northern Hotel.
23. Articles in *Northern Star* newspaper (online) dated 9 June 2014 and 12 May 2015: reporting on the Application and stating that ALDI has applied for a liquor licence "which could see alcohol up to 50 per cent cheaper".
24. Report to the Authority dated 7 July 2015 from a Delegate of the (then) Secretary of NSW Trade and Investment (now the jurisdiction of the Department of Justice) via the Compliance Division of the then Office of Liquor Gaming and Racing, now Liquor and Gaming NSW (LGNSW): In this report, LGNSW advise that the proposed business model (the sale of packaged liquor from premises adjoining an established ALDI Supermarket in a mixed residential and commercial area of Byron Bay) is assessed as "low risk".
25. LGNSW note that the radial density of licensed premises in Byron Bay is "well above the State average" and that data sourced from the NSW Bureau of Crime Statistics and Research (BOCSAR) show that "the venue is located within a combined low, medium and high density crime hotspots in relation to alcohol related assaults".
26. LGNSW advise that it "does not find any compelling evidence to support the sale of liquor prior to 10:00am" and that the sale of liquor prior to this time "may have an adverse impact upon the local and broader community".
27. LGNSW observe that a submission was received by the Authority from NSW Police at Tweed/Byron Local Area Command (LAC) which "details NSW Police strong opposition to the granting of the application", and that 15 public submissions in opposition to the Application and seven public submissions in support of the Application have been received by the Authority.
28. LGNSW report that while it does not object to the granting of the Application based on the proposed business model and location factors, "it would appear that the local and broader community strongly oppose this application" and that the concerns raised by local residents and stakeholders with respect to the Application are "of a reasonable nature and it would not be prudent to disregard them".
29. Copy of an email sent from Senior Constable Grant Seddon, Tweed/Byron LAC Licensing Unit, NSW Police to Mr Grant Cusack (during CIS stage) dated 12 June 2014: In this email, Constable Seddon advises on behalf of NSW Police that the Authority should "reject any application for a Packaged Liquor Licence for this premise" as granting such a licence would "not be consistent with the expectations, needs and aspirations of Byron Bay".
30. Mr Seddon states that:

...given the ongoing unsatisfactory levels violence and anti-social behaviour in Byron Bay, particularly those linked to street drinking and 'pre-loading', police assess a further packaged liquor licence would increase the harm associated with misuse and abuse of liquor and detract from the amenity of community life.

31. Mr Seddon states that the proposed Premises is located "in the same building as one of the town's largest backpackers providing direct access to inexpensive liquor" and that while liquor sold at the Premises is not proposed to be refrigerated, persons attending "late night venues, as is generally the case in Byron Bay" would not be prevented from "the purchase, self-refrigeration and consumption" of liquor purchased at the Premises.
32. Police submission in response to Application dated 21 May 2015: This submission, made on the official Authority form, is completed by Senior Constable Grant Seddon of Tweed/Byron LAC in relation to the Application. It attaches a 7-page submission on behalf of Police signed by Senior Constable Seddon and Detective Inspector Brendon Cullen.
33. In opposing the Application, Police respond to the Applicant's arguments in relation to social impact and make contentions as to the likely negative impacts of granting the Application.
34. Police submit, in response to the Applicant's contention that a "smaller range of products" will be sold from the proposed ALDI licensed business that this contention is not "relevant" by reason that it "doesn't extrapolate to reduced harm".
35. In response to the Applicant's contention that the business will not sell refrigerated liquor Police submit that alcoholic beverages "do not 'require' refrigeration to be consumed" and that "most spirits and many wines are easily and readily consumed without being refrigerated".
36. Police contend that in the author's experience with NSW Police since 1986, spirits and wine are "the drink of choice for the most vulnerable in our communities" and that there is an "advantage" to purchasing products which do not require refrigeration when "anticipating drinking in public areas".
37. Police contend that the entrance to the ALDI Supermarket is "only 60 metres from Jonson Street". Police submit that the Applicant has "not provided any evidence to show" that the majority of its customers will arrive and depart by car, as contended by ALDI.
38. Police contend, "based on direct observations made since 2007" that a "high percentage" of persons who shop within the Byron Bay CBD do so "on foot or park and walk to a number of places in the CBD".
39. In relation to the Applicant's contended benefit of increased convenience to the community, Police contend that "directly adjacent to ALDI" there is a "drive through bottle shop" attached to the Great Northern Hotel and that there is a second drive through bottle shop, The Cellar Byron Bay located "directly behind ALDI" and a third outlet The Sun Bistro, located on the western edge of Byron Bay.
40. In relation to the Applicant's contended benefit of increased competition, Police list eight licensed premises which "all provide takeaway sales and are in competition with each other", being:
 - a) The Beach Hotel
 - b) The Great Northern Hotel
 - c) The Railway Friendly Bar
 - d) The Sun Bistro
 - e) The Cellar Byron Bay
 - f) The Cellar Byron Plaza
 - g) Sunrise Cellars
 - h) The Park Hotel Motel (Suffolk Park).

41. Police state that there are "six separate business owners in one local community providing takeaway alcohol sales, not including the two clubs" and argue that in those circumstances the Applicant's use of the phrase "near monopoly" is a "big stretch".
42. In relation to the Applicant's contention that granting the Application will avoid the need for "special trips", Police submit that special trips are "simply a fact of life when living in the country" and the Applicant has provided no evidence showing that the products offered by "the six different owners" are "not competitively priced".
43. Police submit that while the proposed sales area of the new liquor business to be conducted on the Premises is 32sqm, this "does not include the back of shop storage areas".
44. Police further submit that the "type" of this licensed premises (being a packaged liquor business operating within a supermarket) does not constitute a mitigating factor by reason that the liquor area of the supermarket is located "within metres of the entrance" to the supermarket and "adjacent to tourist accommodation".
45. Police reject, in general terms, the Applicant's contended community benefits of facilitating social/recreational opportunities, strengthening the viability of other nearby businesses and creating economic spin-offs.
46. Police comment that the Applicant's proposed contribution to programs to moderate the drinking culture in the local community "appears to be a worthwhile initiative".
47. Police further state that the proposed ability of the new business to operate as an "outlet for local producers" appears to be a positive community benefit but submit that the Applicant "hasn't mentioned any local producers".
48. Police submit that according to ABS 2011 Census information, the state suburb of Byron Bay has 4,959 residents while the Byron Bay Sector of the Local Area Command of NSW Police encompasses a community of some 9,604 residents.
49. Police contend that Byron Bay "is a very popular tourist destination".
50. Police submit that BOCSAR data (annexed to this submission, noted below) shows that:
 - a) the rates of *non-domestic violence related assault* in the Byron LGA are "2.2 times the state figure"
 - b) the rates of *offensive conduct* in the Byron LGA are "9.4 times the state figure"
 - c) the Byron LGA is "ranked 1st" in NSW for offensive conduct
 - d) rates of *Resist Hinder Police* in the Byron LGA are "4.4 times the state figure" and the LGA is also "ranked 1st" in NSW for this offence category
 - e) the rates of *Liquor offences* in the LGA are "4.2 times the state figure" for NSW.
51. Police contend that "alcohol is the key attributing factor in alcohol related violence and anti -social behaviour in Byron Bay".
52. Police contend that in their experience the many tourists in Byron Bay "buy low cost liquor for consumption in their accommodation, preloading, before heading out for their evening's entertainment".
53. Police contend that they have witnessed "tourists using shopping trolleys, skateboards and other items to assist in taking larger orders of packaged liquor back to their accommodation during day and evening hours".

54. Police contend that "greater and cheaper access to liquor" will only add to this problem within the local community. Police note that "ALDI Australia's slogan is 'Home of the Lowest Prices' as can be seen on ALDI Australia's Facebook page".
55. Police submit that the Applicant:

...has not shown any real benefit to the local or broader community other than giving tourists and some locals another brand of liquor to buy in the hundreds already available (sic)" and that the evidence "strongly indicates" that granting the Application will create "adverse impacts on the local and broader community.
56. *National Drug Law Enforcement Research Fund (NDLERF) "Off-site outlets and alcohol related harm", Series No. 56 (2015) Annexure 01 to the Police submission dated 21 May 2015: This 93-page report provides detailed findings on an investigation by NDLERF into the "relation between rates of violence, alcohol sales and numbers of outlets in both Queensland (stage one) and Western Australia (stage two)", including sales data, licence density, and rates of violent crime in those States.*
57. Miller M., Droste N., Baker T. & Gervis C. "Last Drinks: A Study of Rural Emergency Department" *Emergency Medicine Australasia* (2015) Annexure 02 to the Police submission dated 21 May 2015: This article reports on the findings of a study to "measure the sources and locations of alcohol-related harm by implementing anonymised 'last drinks' questions in the ED of a rural community" (in rural Warrnambool, Victoria). Its key findings include that "alcohol injuries were linked to identifiable venues and public areas" and that "packaged liquor sales substantially contribute to emergency department attendances".
58. Letter from Mr David Templeman, CEO, Alcohol and Other Drugs Council of Australia (ADCA) to Mr Chris Sidoti, Chairperson of (then) Casino, Liquor and Gaming Control Authority titled "Statement on supermarket bottle shops and alcohol pricing" dated 21 February 2012, Annexure 03 to the Police submission dated 21 May 2015: This letter provides various data relating to the impacts of alcohol consumption in Australia from 2003 to 2012.
59. "One on every corner: The relationship between off-licence density and alcohol harms in young people" Alcohol Concern Youth Policy Project (UK), July 2011 Annexure 04 to the Police submission dated 21 May 2015: This report presents findings on an investigation into the impact of alcohol availability on children and young people in England.
60. BOCSAR *Crime and Justice Bulletin* No. 181, "The Effect of Liquor Licence Concentrations in Local Areas on Rates of Assault in NSW", December 2014, Annexure 05 to the Police submission dated 21 May 2015: This report states that its aim is to "investigate the relationship between liquor licence concentrations and assault rates in Local Government Areas (LGAs) in New South Wales". It states that results of this investigation show that "the concentration of hotel licences in an LGA, particularly at higher density levels, was strongly predictive of both DV and non-DV assault rates" and that "a similar, but slightly weaker, association was found for the concentration of packaged licences and DV and non-DV assault rates". The report states that "regulatory authorities should be concerned about increases in liquor outlet density".
61. *Destination NSW Byron Bay LGA Overview*, attached as Annexure 06 to the Police submission dated 21 May 2015: This document provides an overview of the "4-year annual average to the year ending September 2014" of key measures including total visitors to Byron Bay; total overnight visitors; "total spend" and "total overnight visitor

spend". It records, *inter alia*, that 92 per cent of visitors to the Byron LGA came for a "holiday", as opposed to 56 per cent of visitors to NSW as a whole.

62. BOCSAR LGA data relating to *Assault – Non-Domestic Violence Related* in The Byron LGA, attached as Annexure 07 to the Police Submission dated 21 May 2015: This document records the rate of *non-domestic violence assault* per 100,000 persons of population in the Byron LGA in each calendar year from 2010 to 2014. It shows that in 2014, the rate of this offence for this LGA was 955.3, while the rate for NSW as a whole was 425.5 per 100,000 persons. It states that in 2014, the Byron LGA was "ranked 5 out of the 139 Local Government Areas that have populations greater than 3000" for the occurrence of non-domestic violence assault incidents.
63. BOCSAR LGA data relating to *Offensive Conduct* attached as Annexure 08 to the Police Submission dated 21 May 2015: This document records the rate of offensive conduct incidents per 100,000 persons of population in the Byron LGA in each calendar year from 2010 to 2014. It shows that in 2014, the rate of this offence for this LGA was 806.7, while the rate for NSW as a whole was 86.2 per 100,000 persons. It states that in 2014, the Byron LGA was "ranked 1 out of the 139 Local Government Areas that have populations greater than 3000" for the rate of occurrence of offensive conduct incidents.
64. BOCSAR LGA data relating to *Resist or Hinder Officer* attached as Annexure 09 to the Police Submission dated 21 May 2015: This document records the rate of resist or hinder officer incidents per 100,000 persons of population in the Byron LGA in each calendar year from 2010 to 2014. It shows that in 2014, the rate of this offence for this LGA was 389.1, while the rate for NSW as a whole was 88.1 per 100,000 persons. It also states that in 2014, the Byron LGA was "ranked 1 out of the 139 Local Government Areas that have populations greater than 3000" for the occurrence of resist or hinder officer incidents.
65. BOCSAR LGA data relating to *Liquor Offences* - Annexure 10 to the Police submission dated 21 May 2015: This document records the rate of Liquor offences per 100,000 persons of population in the Byron LGA in each calendar year from 2010 to 2014. It shows that in 2014, the rate of this offence for this LGA was 740.2, while the rate for NSW as a whole was 177.1 per 100,000 persons. It states that in 2014, the Byron LGA was "ranked 5 out of the 139 Local Government Areas that have populations greater than 3000" for the occurrence of Liquor offences.
66. Enterprise Information Management (EIM) internal NSW Police data - Annexure 11 to the Police submission dated 21 May 2015: This data shows the percentage of all incidents recorded by Police as "alcohol related" during "2015 for first four months" in the Tweed/Byron LAC, Byron Bay (Police Sector), the Northern Region, Kings Cross LAC, and NSW as a whole. It shows that:
 - a) 80.0 per cent of non-domestic violence assault incidents in the Byron Bay (Police Sector) during this period were recorded as alcohol-related, compared to 38.3 per cent in NSW as a whole
 - b) 91.4 per cent of street offences were recorded as alcohol-related in Byron Bay, compared to 65.0 per cent in NSW as a whole
 - c) 81.8 per cent of move on powers incidents were recorded as alcohol-related in Byron Bay, compared to 39.3 per cent in NSW as a whole
 - d) 89.2 per cent of resist/hinder/assault officer offences in Byron Bay were recorded as alcohol-related compared to 57.9 per cent in NSW as a whole during the first four months of 2015.
67. NSW Police 2014 *Incident Location Report* (Public Place) for Byron Bay - attached as Annexure 12 to the Police Submission dated 21 May 2015: This report indicates the

location name and address of public places in Byron Bay, as well as the number of people, where alcohol has been recorded by Police to have been consumed.

68. NSW Police 2014 *Incident Location Report Map* - Annexure 13 to the Police submission dated 21 May 2015: being a map of Byron Bay showing the locations recorded by Police as sites of public drinking.
69. NSW Police 2014 *Intoxicated Person Incidents by Local Area Command Report*, attached as Annexure 14 to the Police Submission dated 21 May 2015: This document shows that 136 incidents of "intoxicated persons" were recorded by Police as having occurred in Byron Bay by Byron Bay LAC in 2014.
70. NSW Police 2014 *Intoxicated Person COPS Events* attached as Annexure 15 to the Police submission dated 21 May 2015: This attachment comprises 38 COPS reports of offence incidents recorded as having occurred in Byron Bay during the period from 1 January 2014 to 21 December 2014 involving an "actual intoxicated person".
71. NSW Police 2014 *Intoxicated Person Map*, attached as Annexure 16 to the Police submission dated 21 May 2015: being a map of Byron Bay showing the locations recorded by Police as sites of recorded offences involving an "actual intoxicated person".
72. NSW Police diagrams of Byron Bay attached as Annex 17 to the Police submission dated 21 May 2015: showing locations of recorded incidents of "assault", "malicious damage" and "street offences" for the period March 2014 to February 2015.
73. Screen Shot of ALDI Australia advertising slogan 'Home of the Lowest Prices', attached as Annexure 18 to the Police Submission dated 21 May 2015: being a screenshot of this slogan next to the words "discover our low prices at ALDI.com.au".
74. Email from Ms Marie Hayes to the Authority dated 23 June 2014: In this email the writer, a resident of Bunjil Place, Byron Bay, states that she "strongly objects" to the granting of a liquor licence for "yet another bottle shop/outlet" on the bases that granting such a licence "does not support the principles of the Byron Bay Liquor Accord and The Buddy Action Team"; that there are "five existing retail outlets" selling liquor "including one outlet only 10 metres away"; that there is a "grave problem of underage drinking" in Byron Bay generally and during holiday and festival periods "which may be read as most of the time"; and that "extra police power" is required to deal with this problem and other "ongoing" issues including "irresponsible drinking", "unruly behaviour, fighting, accidents, broken glass and alcohol litter" throughout Byron Bay. Ms Hayes contends that the "supply of cheap liquor "will "exacerbate the problems already incurred with the party town image".
75. Email from Ms Lorraine Ward to the Authority dated 13 June 2014: In this email the writer, a resident of Byron Bay, asks the Authority not to allow the Application by reason that Byron Bay is "already flooded by an oversupply of liquor outlets" and local Police are "already run off their feet with alcohol related domestic violence" incidents meaning that if Police are called "for a noise complaint from an out of control holiday let", their response is "they will say they are too busy with domestic violence calls".
76. Email from Dr Graham Truswell from the address info@lastdrinksinbyron.org.au to Mr Grant Cusack dated 15 June 2014: In this email on behalf of the Last Drinks coalition in Byron Team, Dr Truswell states that this group was formed "last year" as a "response to preventing alcohol related violence in Byron Bay" and has "over 300 local supporters". Dr Truswell submits that Byron Bay is "rated the 6th most violent town in NSW", has "over 70 licensed venues in our small town" and has "the highest rate of drink driving

offences in NSW" and "the third most violent late night venue in NSW". Dr Truswell submits that "granting another packaged liquor licence could contribute to more violence and anti-social behaviour, and more cheap alcohol being consumed by young people" and that "pre-loading amongst young people" has been "identified as one of the key contributors to the violence" in Byron Bay. Dr Truswell further submits that "alcohol related violence is severely affecting our local community".

77. Email from Mr Alan Hunter, Byron Shire Council, to info@lastdrinksinbyron.org.au, copied to the Authority, dated 15 June 2014: In this email addressed to Dr Truswell, Mr Hunter (on behalf of Byron Shire Council) queries "what evidence you have that alcohol related violence is increased by the number of discounted liqueur retailers". Mr Hunter states that "ALDI provide a valuable option for community shoppers" and that "many responsible drinkers will benefit from cheaper priced beer and wine in their weekly grocery bill". Mr Hunter contends that Dr Truswell's arguments need to be "evidence and not ideologically or commercially based".
78. Email from Mr Luis Granada to LGNSW dated 15 May 2015: In this email opposing the Application the writer, local resident of Broken Head Rd, Byron Bay, submits that the proposed Premises is located "30m from Byron Bay Centrelink, the busiest on the north coast", "30m from Railway Park, the main CBD location for homeless people to gather and drink in public", in the "dead centre of the Byron LGA hotspot for alcohol related assault" and in the "dead centre of the Byron Bay Alcohol Free Zone". Mr Granada submits that "to grant this licence would be grossly negligent".
79. Email from Mr Darren Pearson to LGNSW dated 1 May 2015: In this email opposing the Application the writer, a local resident of Lawson St, Byron Bay, quotes a decision made by the Authority refusing an application by ALDI Foods Pty Limited for a packaged liquor licence in Taree, which stated: "in the Authority's view there will be adverse consequences from introducing a new discount retailer into a community with prevailing high levels of alcohol related crime".
80. Email from Mr Darren Pearson to LGNSW dated 22 May 2015: In a second email opposing the Application, the writer states that he is a member of the Byron Bay Liquor Accord which has "spent the last three years working hand in hand with OLGR, council and local police to reduce the significant alcohol related harm in the CBD of Byron Bay", and that "many of the most successful actions taken have focused on the removal of the very cheapest methods of getting drunk". Mr Pearson refutes the Applicant's argument that granting the Application will diminish the effects of a "monopoly" in retail liquor in Byron Bay on the basis that "Byron Bay CBD has four bottle shops with three different owners and the greater Byron Bay area has seven bottle shops in total with five different owners". Mr Pearson contends that if the Application is granted, "the precedent is set for any supermarket in Byron Bay to have an attached liquor licence approved".
81. [The Authority notes that Mr Pearson's email address provided in his submission to the Authority is attached to thecellar.com.au, which is the name of a commercial competitor of the proposed licensed business].
82. Submission to the Authority from Mr Darren Pearson, undated: This submission is in the same terms as the email sent to LGNSW by Mr Pearson on 22 May 2015. It states that the writer is an "occupant of neighbouring premises (within 100 metres of the premises)". Attached to the submission is a photograph of "Nomads backpackers" in which the entrance to the ALDI Supermarket is visible next door, and a caption stating "lodge with an endless supply of foreign tourists unfamiliar with local liquor laws, for under 18's to ask to buy alcohol for them"; photographs of the inside of the ALDI Supermarket; a map of Byron Shire Council Alcohol Free Zones showing the location of the proposed

Premises inside one such Zone; and excerpts of BOCSAR data relating to rates of alcohol-related offences in the Byron LGA.

83. Email from Ms Liette Snow to LGNSW dated 16 May 2015: In this email the writer, a local resident of Sunrise Boulevard, Byron Bay, submits that the Application is "a bad idea for Byron Bay" as it is close to Nomads Backpackers which accommodates "large numbers of 'financially constrained' young people, that are most at risk from a development like this". The writer states that "as a mother of teenage boys, I have serious concerns about secondary supply of alcohol to under 18's" and that "local teenagers know that backpackers will buy alcohol for them as they are unaware of Australia's liquor laws".
84. Submission to the Authority from Ms Hannah Spalding, undated: In this submission on behalf of the Byron Bay Liquor Accord (BBLA), the writer states that the BBLA "holds great concerns in relation to any new license of any type (sic) being issued in Byron Bay" due to the prevalence of "street drinking and pre fuelling" as well as alcohol related violence. Ms Spalding submits that while there have "recently been some reductions" in numbers of alcohol related assaults in the area "with the combined effort of OLGR, NSW Police, Byron Council and Byron Bay Liquor accord members", there is "still a lot of work to be done to bring down the town's alcohol related statistic" to align with "community expectation". Ms Spalding states that BBLA is also concerned about the Application on the basis of the proximity of the Premises to hotspots for alcohol related violence and the "largest backpackers in town".
85. Email from Ms Tara Donnelly to LGNSW dated 15 May 2015: In this email the writer, a local resident of Corkwood Crescent, Byron Bay, quotes from various pages of the Authority's decision in relation to an application for a packaged liquor licence for an ALDI Supermarket in Taree, apparently to draw parallels between the Authority's rationale for rejecting that application and the issues raised by the current Application. Ms Donnelly submits that "to approve this licence would be very harmful".
86. Letter from Ms Nicqui Yazdi on behalf of the Byron Bay Underage Drinking and Drug Initiative (BUDDI) Community Drug Action Team, sent by email to the Authority dated 12 May 2015: In this letter Ms Yazdi submits that BUDDI is "strongly opposed" to the Applicant's proposed licence on the bases that to grant ALDI a packaged liquor licence "could set a precedent" for other supermarkets in Byron Bay to apply for liquor licences when "Byron Bay already has 60 per cent more liquor licences than the NSW state average"; that "secondary supply is a major issue in Byron Bay"; and that as a "national brand" the Applicant will "most likely not adhere to any of the Liquor Accord's agreements on how alcohol is sold here".
87. Ms Yazdi states that in January 2014, Byron Shire Mayor Simon Richardson "issued a public appeal" to then premier Barry O'Farrell "calling for a freeze on liquor licence applications in Byron Bay" due to the "over-saturation of alcohol-related problems" in the town. Ms Yazdi submits that "we need to be actively supported in our attempts to find solutions to this issue, not have more alcohol outlets adding more fuel to the already out-of-control fire that wreaks havoc in our small community on a daily basis".
88. Email from Ms Kaye Pearson to LGNSW dated 15 May 2015: In this email Ms Pearson, local resident of Sunrise Lane, Byron Bay, contends that the Application "represents possibly a huge increase in the number of bottle shops in Byron Bay" as the Authority will have "no credible ability" to reject potential applications from other local supermarkets if it decides to grant this Application. Ms Pearson submits that there is "severely limited visibility" of the street from inside the Premises and that staff "sit at the checkouts" with "their backs to the entrance and outside of the shop" and that therefore staff "will in no

way be able to monitor for secondary supply" of liquor sold at the Premises. Ms Pearson refers to applications by the Applicant for packaged liquor licences in other locations in NSW which have been rejected by the Authority and queries why the Application is "being even considered in Byron Bay".

89. Email from Mr Steve Harris to Mr Grant Cusack dated 16 May 2014: In this email Mr Harris states that he lives on the corner of Fletcher and Lawson Streets "very close to the ALDI store" and that "we do not in principle have any objections to the granting of a licence to ALDI". However, Mr Harris submits that "it would be good neighbour policy" if ALDI would "take responsibility for the rubbish left in the streets", as "we clean up beer and wine bottles and cans disposed of in the street by people on their way back from bottle shops".
90. Email from Ms Rosslyn Elliott to Mr Grant Cusack dated 10 June 2014: In this email Ms Elliott states that she does "not agree that ALDI should have a bottle shop in Byron Bay" as "our town is currently amply provided with alcohol outlets", "plagued with violent actions due to alcohol most weekends" and dealing with young people "pre-loading on retail outlet alcohol" causing "many fights" on the street.
91. Letter from Ms Nicqui Yazdi, on behalf of BUDDI to Mr Grant Cusack, undated: In this letter, which is in similar terms to the letter from BUDDI to the Authority, Ms Yazdi states that BUDDI is "strongly opposed" to the Application and that "alcohol related crime statistics for Byron Bay are appalling".
92. Email from Mr Geoff Bensley to Mr Grant Cusack dated 10 June 2014: In this email Mr Bensley states that he has lived in Byron Bay for "50 years" and advises that he "will be objecting" to the Application "via the OLGR website" in order to "protect my town".
93. Letter from Peter McGlennon, Director of Byron Youth Service (BYS) (no addressee), filed with the Authority on 21 April 2015: In this letter Mr McGlennon states that BYB "strongly opposes this application" and contends that granting the Applicant a packaged liquor licence "will add to the alcohol related issues in the town" which "BYB youth workers witness on a nightly basis already". He submits that "our primary concern is with the impact on young people" and that "all evidence suggests that the ready availability of low cost alcohol contributes to alcohol related harm for young people". Mr McGlennon states that the Byron community has "done much in recent years to tackle issues" relating to alcohol misuse and abuse and that the BBLA "voluntarily imposes restrictions aimed at minimising the supply of cheap and bulk liquor".
94. Email from Ms Deborah Stone to Mr Grant Cusack dated 18 May 2014: In this email Ms Stone, local resident of Jonson St, Byron Bay, states that the Premises is located "right next door to the drive in bottle shop of the Northern Hotel", that Byron Bay has become "less and less appealing to visitors and families on holiday" on the basis that "alcohol fuels gangs and violence", and that "we as a collective town do not want more opportunity for people to buy alcohol" as "our town is impacted more than enough".
95. Submission from Mr Timothy Wild to the Authority dated 14 May 2015: In this submission Mr Wild, local resident of Byron Bay, states that he is "in favour" of the Application as he shops for groceries at the ALDI Supermarket and would "find it convenient to access the quality and prices of their wine". Mr Wild submits that he does not believe "there is enough range and competition in the bottle shop business in Byron Bay" and that "responsible consumers" are being "ripped off". He contends that "the existing alcohol retailers" in Byron Bay "do not provide a good enough service" and that "closing Byron Shire to any more liquor retailers" is not "the answer" as "problem drinkers will always get their booze some way".

96. Email from Mr Greg Owens to the Authority dated 13 May 2015: In this email Mr Owens states that he supports the Application and has a "long association with Byron Bay and especially its business community", referring the Authority to his website www.byroncafelawyer.com.au. Mr Owens submits that "ALDI have taken a special place with shopper and consumers in Byron Bay" and that this supermarket has "a very distinct point of difference from their competitors" as well as an "excellent corporate image and ethic".
97. Submission from Mrs Carol Jacobs and Mr Neville Jacobs to the Authority dated 21 April 2015: In this submission Mr and Mrs Jacobs state that they live "just down the road from ALDI in Byron and shop there weekly", that "every couple of weeks" they make a "special trip" to the ALDI Supermarket in Ballina because "they also offer the alcohol range there whereas the Byron ALDI does not". They submit that "this is an inconvenience and extra expense" and that they "would much rather shop locally and have ALDI liquor available in Byron Bay".
98. Submission from Ms Christina Hirschberg to the Authority dated 11 February 2015: In this brief submission in support of the Application, Ms Hirschberg submits that she drives to ALDI Ballina "at least once a month to visit the alcohol section as it is not available here" and that "it is an inconvenience to have to make a special trip".
99. Submission from Ms Danae Rice-Finlayson to the Authority dated 21 April 2015: In this submission, Ms Rice-Finlayson, resident of Goonellabah, NSW states that she lives "during the school term" in Lismore and supports the Application as she does grocery shopping at ALDI Byron Bay and has "been disappointed to have to vary my regular routine and buy liquor at a separate outlet". Ms Rice-Finlayson submits that "as a holiday town, liquor sales represent one of the main forms of income for Byron Bay".
100. Submission from Ms Ally Cavalchini to the Authority dated 21 April 2015: In this brief submission Ms Cavalchini, resident of Waterford West, QLD, states that she is "moving to the North Coast region later this month and spend a great deal of time in Byron", that Byron Bay is "in desperate need of budget friendly stores" and that the "convenience" of being able to shop at "the one store for both everyday groceries and liquor items is a strong selling point for securing my business on a regular basis".
101. Submission from Mr Ross Farley to the Authority dated 21 April 2015: In this brief submission Mr Farley, local resident of Cooper St, Byron Bay, states that he supports the Application. He submits that ALDI has "already provided some much needed competition" in Byron Bay and that granting the Application "would have the same affect (sic) on the local liquor stores" which would be "a great win for the local community".
102. Submission to the Authority from Mr Wayne Bertram, Manager Sustainable Development, on behalf of Byron Shire Council (Council) dated 22 May 2015: In this 2-page submission, Mr Bertram states that Council opposes the Application on the basis of "continued community concerns about existing alcohol consumption problems within the Byron bay CBD", as well as a "culture of drinking to excess" and "the associated violence". Mr Bertram submits that the potential for these problems to be exacerbated by "the increased availability of discounted alcohol" is a "major concern" to Council.
103. Mr Bertram refers to an application made by Dan Murphy's to the Authority for a packaged liquor licence for premises located "in the same proximity to Jonson Street" which was refused by the Authority and states that the present Application is "also within the same premises as a 260 bed hostel" and therefore has "the potential for even greater anti-social behaviour fuelled by uncontrolled alcohol consumption in this area".

104. Mr Bertram submits that while development approval has been issued for the ALDI Supermarket, "this development application did not indicate that the premises were proposing to sell alcohol" and that Council has therefore not undertaken a social impact assessment of the "holistic development" which may have resulted in requirements for "different controls for the effective management of this area, such as restricted hours of operation".
105. Letter from NSW Roads & Maritime Services (RMS) to Mr Grant Cusack, copied to the Authority dated 29 May 2014: This submission includes data showing that the percentage of casualty crashes with alcohol as a factor which occurred in the Byron LGA from 2004-2013 was 10.6 per cent of all casualty crashes in the LGA, as opposed to 9.4 per cent for the "Northern NSW" region and 5.2 per cent for NSW as a whole. RMS submit that in total there were 123 alcohol-related casualty crashes in the Byron LGA between 2003 and 2013.
106. RMS request that if the Application is granted, the licensee or representative of the Premises join and actively participate in the local Liquor Accord and draw staff's attention to RMS brochure *Drinking and Driving: The Facts* which outlines drink driving penalties, blood alcohol limits and how alcohol affects driving.
107. Attached to this submission is detailed data referring to "alcohol related casualty crash statistics 2004-2013" for the Byron LGA.
108. Copy of Notice of Determination of a Development Application No. 10.2011.399.1 (DA) issued by Council on 4 October 2011: This DA grants consent for "alteration/additions to existing commercial development" with respect to "Lot: 8 DP: 1134124 1 Byron Street, Byron Bay" and sets out conditions of consent.
109. Submission from Mr Tony Hatzis on behalf of the Applicant to the Authority dated 18 March 2016: In this detailed submission, Mr Cusack responds to the Authority's email of 7 July 2015 requesting further information in relation to the Application. A detailed summary of this submission is provided below in relation to the Applicant's case on overall social impact.
110. Map of Byron Bay and surrounds (Appendix 1 to the Applicant's submission dated 18 March 2016): This map is titled "Byron bay liquor licence application – Definition of Local & Broader Community areas" and shows an area encompassing part of Ewingsdale to the west of Byron Bay, extending 5 kilometres north of Byron Bay and to Hayters Hill in the south (the broader community), as well as a larger image in which the suburb of Byron Bay is visible (the local community).
111. *Petition For Liquor Licence – ALDI Byron Bay* (Appendix 2 to the Applicant's submission dated 18 March 2016): This document shows hundreds of names addresses and signatures of persons supporting the Application under the comment "We prefer to purchase ALDI's quality branded products and expect to be able to purchase liquor at the same time as we do our grocery shopping. If we wish to purchase ALDI branded liquor products we are presently required to travel to Ballina to do so ... in our view the creation of a small liquor department in the ALDI supermarket is not likely to lead to any increase in crime or anti- social behaviour". While the majority of signatures are from persons indicating that they reside in Byron Bay, many indicate Suffolk Park, Bangalow, Lennox Head, Brisbane, Crescent Head, Mullumbimby, Ewingsdale with some indicating suburbs of Sydney and Melbourne and others from regional NSW and Victoria, with some indicating residence in Canada, New Zealand or the United Kingdom.

112. BOCSAR data for Ballina and Lismore for the period from October 2010 to September 2015 (Appendix 3 to the Applicant's submission dated 18 March 2016): This document states that the packaged liquor licences for ALDI Ballina and ALDI Lismore were granted in July 2012 and indicates no increased rates of occurrence for any offence category from October 2010 to September 2015 for those areas.
113. Report of Mr Adam Purcell, A&M Consultants Pty Limited, to Mr Grant Cusack dated 12 December 2015 (Appendix 4 to the Applicant's submission dated 18 March 2016): In this report, Mr Purcell states that he has an extensive background in NSW Police and has since retirement acted in a "compliance-consulting role for the liquor industry" without "prejudice or favour".
114. Mr Purcell states that he conducted a "site assessment" in Byron Bay over Sunday 6 December 2015 and Monday 7 December 2015 and that it was "quite clear" during this assessment that a "significant proportion of people present within the Byron Bay area were either international or domestic tourists".
115. Mr Purcell reports that the ALDI Supermarket in Byron Bay is located in a "reasonably central" position to "the CBD shopping area" and has a "dedicated car park" with a capacity of "in excess of 100 vehicles". Mr Purcell observes that the "CBD area of Byron Bay is a designated alcohol-free zone", that there is "extensive signage and advertising" to this effect and that during his assessment he "did not detect any person" consuming alcohol within the Alcohol Free Zone.
116. Mr Purcell states that there are "currently four options" for shoppers in the Byron Bay CBD to "purchase liquor", which are all "reasonably close to the ALDI Supermarket". Mr Purcell reports that after conducting a "thorough price assessment" of bottle shops in Ballina and those in Byron Bay, he concluded that "the mainstream range of liquor" in Byron Bay bottle shops is "on average 10-20 per cent more expensive" than in Ballina.
117. Mr Purcell states that Police are "comfortable" with "inflated prices" for liquor in Byron Bay as a "management tool to discourage liquor consumption" and that this "theory" is "naïve and inaccurate". Mr Purcell reports that his "opinion" is that granting the Application "will not alter liquor consumption or add to alcohol-related crime".
118. Mr Purcell submits that the Police COPS reports provided with the Police submission indicate that a "significant proportion" of the offenders concerned "may have actually been under the effects of illegal drugs, not alcohol".
119. Mr Purcell reports that based on his observations in Byron Bay, his "background in the NSW Police" and his "current involvement in the liquor industry", it is "reasonable" that ALDI's customers in Byron Bay would expect to "purchase their alcohol requirements at the same time as their household shopping" and that the existing liquor outlets in Byron Bay sell liquor at "inflated prices" which "disadvantages locals and tourists alike".
120. OLGR Final Report on *Evaluation of the Byron Bay Alcohol Action Plan*, dated May 2015 (Appendix 5 to the Applicant's submission dated 18 March 2016): The key findings section of this extensive report states, *inter alia*, that following the implementation of the Alcohol Action Plan, "there was a general perception across stakeholders that public safety in Byron Bay had improved, and this was supported by the analysis of offence data from BOCSAR"; that "higher risk venues in Byron Bay show a high level of compliance with the accord terms"; that there is "evidence of improvements in alcohol-related crime and anti-social behaviour in Byron Bay"; and that "greater police patrols during high risk periods should be considered to address street drinking and enforce alcohol-free zones".

121. Copy of a letter from the Authority to Mr Tony Schwartz, Back Schwartz Vaughan Lawyers, in relation to an application for removal of packaged liquor licence LIQP700351330 for a proposed "Dan Murphy's" store, dated 3 October 2012: This document sets out the reasons for the Authority's refusal of this application, the material before the Authority and the statutory considerations it took into account in making this decision.
122. Letter from Mr Simon Richardson, Mayor of Byron Shire, to the Authority dated 1 April 2016: In this letter, Mayor Richardson states that he is "personally opposed" to the Application as granting a supermarket in Byron Bay a packaged liquor licence would "set an unwelcome precedent" and "could add" to the "already higher than state average rates of alcohol-related crime" in Byron Bay. Mayor Richardson contends that granting the Application would "go against the wishes of the community as a whole" as Byron Bay "constantly battles with alcohol-related problems", being an "all-year-round, high-traffic tourist destination" popular with young people meaning that alcohol "poses rather unique issues" in this community.
123. Mayor Richardson submits that the proximity of the Premises to a public park and a backpackers hostel is "particularly concerning" and that, as ALDI advertises nationally, it could "easily stand outside local Byron Bay Liquor Accord members restrictions" which were "crafted voluntarily by local members".
124. Mayor Richardson states that in January 2014 he issued a public appeal to then Premier Barry O'Farrell calling for a freeze on liquor licence applications in Byron Bay and that he "stands by this" as Byron Bay needs to be "actively supported" in its attempts to "find solutions to the issues that alcohol causes in our small community".
125. Email from Ms Nicqui Yazdi to the Authority dated 14 March 2016: In this email, Ms Yazdi requests a telephone conference with "the CEO or manager of the ILGA board" prior to the Authority making a decision in relation to the Application. Ms Yazdi states that over the last week she has been "inundated" with community members' objections to the Application. Ms Yazdi claims that "we strongly objected as an entire community" to the Dan Murphy's application for a Byron Bay liquor store in 2012 and that "we feel that this application is just as potentially detrimental". Ms Yazdi submits that the Premises is located "inside the building of a backpackers hostel" and "straight across the road from the most problematic of our public parks" which is "known for public drinking happening both day and night". Ms Yazdi contends that granting the Application would "increase the already over-saturation of alcohol problems here".
126. Licensing data sourced from the Authority's records: showing all licensed premises in postcode 2481 (covering the suburbs of Broken Head, Byron Bay, Ewingsdale, Hayters Hill, Myocum, Skinners Shoot, Suffolk Park, Talofa and Tyagarah). According to these records there are currently four packaged liquor licences in postcode 2481, being The Cellar Byron Bay, The Cellar Byron Plaza, Sunrise Cellars (Byron Bay), and Latino Cellar (Byron Bay).
127. The Authority's licensing data also records that there are a total of 122 licensed premises within the Byron LGA and that 53 licensed premises within 2 kilometres of the Premises. This data shows that of the total 122 liquor licences in the LGA, 10 are club licences, 11 are hotel licences, 79 are on-premises licences, 12 are packaged liquor licences and 10 are producer wholesaler licences.
128. BOCSAR Crime Maps based upon data from October 2014 to September 2015 detailing hotspots for the concentration of offences in the Byron LGA: This data shows that the Premises is located with high density hotspots for incidents of domestic assault, non-

domestic assault, and malicious damage to property offences which occurred in the Byron LGA during this period.

129. BOCSAR Report on *Crime by LGA and Alcohol Related Status* for the period from July 2014 to June 2015: This report records rates of alcohol related offences which occurred in each LGA in NSW, and on average across NSW. It indicates that between July 2014 and June 2015:
 - a) the rate per 100,000 persons of *alcohol related domestic assault* incidents within the Byron LGA was 168.1, compared to the NSW rate of 122.6 per 100,000 persons
 - b) the rate of *alcohol related non-domestic assault* incidents in the LGA was 495.0 compared to the rate of 144.0 per 100,000 persons across NSW as a whole
 - c) the rate of *alcohol related assault police* incidents in this LGA was 34.2 compared to 18.2 per 100,000 persons recorded across NSW as a whole
 - d) the rate of *alcohol related offensive behaviour* incidents in this LGA was 719.2 per 100,000 persons compared to 88.2 for NSW as a whole.

130. BOCSAR *Report on Crime for the Byron LGA* and the BOCSAR *Report on Crime for New South Wales* for the calendar year 2014: These report record rates of alcohol related offences which occurred in each LGA in NSW, and on average across NSW. They indicate that between July 2014 and June 2015:
 - a) the rate per 100,000 persons of *domestic assault* incidents within the Byron LGA was 427.1, compared to the NSW rate of 392.3 per 100,000 persons
 - b) the rate of *non-domestic assault* incidents in the LGA was 955.3 compared to the rate of 425.5 per 100,000 persons across NSW as a whole
 - c) the rate of *assault police* incidents in this LGA was 63.3 compared to 34.0 per 100,000 persons recorded across NSW as a whole
 - d) the rate of *malicious damage to property* incidents in this LGA was 1037.6 per 100,000 persons compared to 918.0 for NSW as a whole.

131. Authority liquor licence density data: This data, obtained by Authority staff and derived from licensing records that are publically available from LGNSW, indicates that the Byron LGA as a whole recorded:
 - a) a rate of 44.47 *packaged liquor licences* per 100,000 persons, above the NSW state wide rate of 32.85
 - b) a rate of 17.10 *registered club licences* per 100,000 persons, below the NSW state wide rate of 20.48
 - c) a rate of 34.21 *full hotel licences* per 100,000 persons, above the NSW state wide rate of 30.36
 - d) a rate of 37.63 *on-premises licences* per 100,000 persons, below the NSW state wide rate of 121.31.

132. SEIFA data published by the ABS: This data, prepared on the basis of the 2011 Census, indicates that the Byron LGA ranked in the 7th decile, compared to other local government areas in the state, on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged). The state suburb of Byron Bay ranked in the 5th decile, compared to other state suburbs in NSW, on the Index of Relative Socio-Economic Advantage and Disadvantage.

STATUTORY OBJECTS AND CONSIDERATIONS

133. Division 5 of the Act addressed packaged liquor licences and includes sections 29 and 30, which provide:

29 Authorisation conferred by packaged liquor licence

- (1) *Retail sales* A packaged liquor licence authorises the licensee to sell liquor by retail in sealed containers on the licensed premises, for consumption away from the licensed premises only:
 - (a) during the standard trading period or such other period as may be authorised by an extended trading authorisation, or
 - (b) in the case of any Sunday that falls on 24 December-from 8 am (or such earlier time as may be authorised by an extended trading authorisation) to 10 pm on that day.
- (2) *No retail trading on restricted trading days.* Despite subsection (1), a packaged liquor licence does not authorise the licensee to sell liquor by retail on a restricted trading day.
- (3) *Selling liquor by wholesale or to employees* A packaged liquor licence also authorises the licensee:
 - (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and
 - (b) to sell or supply liquor, at any time on the licensed premises, to the employees of the licensee or of a related corporation of the licensee.
- (3A) *An extended trading authorisation must not authorise the sale after 10 pm on any day of liquor for consumption away from the licensed premises.*
- (4) *Tastings* A packaged liquor licence also authorises the licensee to sell or supply liquor, on the licensed premises and during the trading hours permitted by subsection (1), otherwise than in sealed containers to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.

30 Liquor sales area required if bottle shop is part of another business activity

- (1) *If the primary purpose of the business carried out on the premises to which a packaged liquor licence relates is not the sale of liquor for consumption away from the licensed premises, liquor may only be sold under the licence in an area of the licensed premises ("the liquor sales area") that is adequately separated from those parts of the premises in which other activities are carried out.*
- (2) *The principal activity carried out in any such liquor sales area must be the sale or supply of liquor for consumption away from the licensed premises.*

134. The power to grant a new liquor licence is provided by section 45 of the Act, which states, relevantly:

45 Decision of Authority in relation to licence applications

- (1) *The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.*
- (2) ...
- (3) *The Authority must not grant a licence unless the Authority is satisfied that:*
 - (a) *the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and*
 - (b) *practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and*
 - (c) *if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.*
- (4) ...
- (5) ...

- (5A) *Without limiting subsection (3)(a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:*
- (a) *is of good repute, having regard to character, honesty and integrity, and*
 - (b) *is competent to carry on that business or activity.*

135. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

136. Section 48(5) of the Act states:

48 Community impact

- (5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*
- (a) *the community impact statement provided with the application, and*
 - (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),*
- that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.*

137. An application for a packaged liquor licence is a type of licence prescribed by section 48(2).

138. In determining the Application, the Delegate has also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:

3 Objects of Act

- (1) *The objects of this Act are as follows:*
- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

APPLICANT'S CASE ON OVERALL SOCIAL IMPACT

139. In its submission with respect to the overall social impact of granting the Application which was filed with the Application on 21 April 2015, the Applicant submits that the local community is considered to be "Byron Bay, Suffolk Park, Broken Head and Ewingsdale" and the broader community is considered to be "Byron LGA".

140. The Applicant submits that prior to the licence being exercised, "application will be made to the Authority" for a "suitably trained employee" of the existing supermarket at the

Premises to be appointed as the approved manager on behalf of the Applicant. The Applicant submits that all staff involved in the sale and supply of liquor will "undertake a special induction course" and periodic "refresher training" in addition to the required RSA course.

141. The Applicant makes submissions by reference to *Authority Guideline 6: Consideration of Social Impact*, which may be summarised as follows.
142. *Type of proposed licensed premises*: the Applicant submits that the proposed premises will be located "wholly within" an existing ALDI Supermarket; "small in size"; sell a "modest range of liquor"; and trade "fewer hours than most traditional retail liquor stores".
143. The Applicant contends that studies show that the most problematic licensed venues, being "typically hotels and nightclubs concentrated in late-night entertainment districts", account for "a grossly disproportionate share of assaults and alcohol-related harms", and that these types of venue "bear no similarity to the modest packaged liquor department" for which the proposed licence is sought.¹
144. The Applicant contends that a "well managed liquor store forming part of or adjoining a supermarket" is "less likely to result in any adverse/negative social impacts".
145. *Scale of the proposed licensed premises*: the Applicant submits that the proposed licensed area will comprise "approximately 32 square metres" which, it is contended, is "significantly smaller" than the size of a "traditional liquor store" at "in excess of 100 square metres".
146. The Applicant submits that the proposed premises will sell a "small range of liquor" comprising "ALDI brand products (including beers, wines and spirits)" as well as, "on occasion", a "small selection of non ALDI branded products" for "a limited time until sold out". The Applicant submits that while the number of product lines sold at the Premises will "vary from time to time", generally there will be "less than 100 lines" of liquor available at the Premises, and that liquor "will not be sold refrigerated".
147. The Applicant submits that CCTV surveillance is presently in place throughout the ALDI Supermarket; that "this will also be the case in respect of the proposed licensed premises"; and that CCTV footage is stored in a hard drive and images are displayed on a monitor, which is "kept in the store office".
148. *Trading hours*: the Applicant submits that the proposed trading hours (from 8:30am to 8:00pm Monday to Wednesday and Friday; 8:30am to 9:00pm Thursday; 8:00am to 6:00pm Saturday; and 10:00am to 6:00pm Sunday) are "less than the standard trading hours permitted for such a licence".
149. *Location of the proposed licensed premises*: the Applicant contends that it is "unlikely" that granting the licence will result in "any adverse impact on the amenity of the area such as by way of noise, litter, traffic etc" on the basis that the "majority of customers" will "arrive and depart by car", as they will attend the proposed licensed premises before or after purchasing groceries.

¹ The studies cited by the Applicant are: Nicholas R. *Identifying and Responding to Problematic Licensed Premises – A Guide for Police*. A Discussion Paper prepared for the Commissioners' Drugs Committee of Police Commissioners of Australasia and the South West Pacific Region, Adelaide: Australasian Centre for Policing Research, 2006; Briscoe S. and Donnelly N. *Liquor Licensing Enforcement Activity in New South Wales*, Alcohol Studies Bulletin No. 1, Sydney: NSW Bureau of Crime Statistics and Research (2003); and National Drug Law Enforcement Research Fund (2006) *"Understanding and Responding to Alcohol-Related Social Harms in Australia. Options for Policing."* A Discussion Paper prepared by NDLREF, "esp at 4.1.6".

150. *Density*: the Applicant cites "recent licence density figures for NSW and Byron LGA" which reveal that there are 44.50 packaged liquor licences per 100,000 persons of population in the Byron LGA, as opposed to 35.48 per 100,000 persons of population in NSW as a whole. The Applicant submits that there are currently four packaged liquor licences, four hotels and three clubs located in the State suburb of Byron Bay; that only two of the hotels in the town provide separate bottle shops; that one of the packaged liquor licences in Byron Bay is limited to sales by telephone, facsimile, internet or mail order; and that another is located "outside the main shopping area".
151. The Applicant further submits that the "other two" packaged liquor licences are owned by the "Cellar" group, both trading as "Little Bottler", and contends that this "limits competition for packaged licences in the main township area of Byron Bay".
152. The Applicant submits that according to the *Byron Shire Destination Management Plan 2014-2020*, the Byron LGA has the "second highest level of international visitation in NSW (behind Sydney)", attracting approximately 1.4 million visitors each year. The Applicant states that "2011 Census data reveals that 26.6 per cent of Byron Bay's private dwellings were unoccupied" and contends that "Byron Bay's resident population is not an accurate indication of the number of persons that facilities and services in the area are required to accommodate".
153. *Cumulative social impact*: the Applicant contends, on the basis of the above-mentioned factors, that granting the Application is "unlikely to cause an overall social impact which is detrimental to the well-being of the local or broader communities" and on the contrary "will bring about significant public interest benefits".
154. The Applicant then sets out detailed submissions in relation to measures to reduce the potential for alcohol-related harms, which may be summarised as follows.
155. *Preventing intoxication and sales to minors*: the Applicant submits that detailed policies and practices will need to be in place at the Premises to ensure the responsible operation of the Premises; that "ALDI is an experienced operator of Supermarkets" worldwide; and that "ALDI was the first retailer in Australia to commit to a long term funding partnership with DrinkWise Australia". The Applicant argues that, accordingly, the Authority can be satisfied that "adequate practices will be in place to ensure that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises".
156. The Applicant submits that any person suspected of being under the age of 25 years will be asked to produce acceptable identification before being supplied with liquor and that staff will be trained to be "attentive towards ensuring there is no secondary supply to minors".
157. *Liquor sales area*: the Applicant submits that as required by section 30 of the Act, the proposed licensed premises will be "adequately separated from the Supermarket" by a "fixed, solid and permanent screen wall approximately 1.8 metres high" made of "timber and acrylic panels".
158. *Notification of stakeholders and issues raised during consultation*: the Applicant states that expressions of "concern/opposition" to the grant of the proposed licence were received from the Local Community Drug Action Team, the Byron Youth Service, the "Last Drinks in Byron" group, local Police, RMS and some local residents. The Applicant submits that the concerns raised were in relation to, *inter alia*, the potential for increased alcohol-related violence and anti-social behaviour; increased "pre-loading"; creating a "precedent" for other supermarkets in Byron Bay to obtain liquor licences; licence

density; cheaper alcohol; lack of need for another licensed outlet; and rates of alcohol-related road crashes.

159. In response, the Applicant "acknowledges that many of the concerns expressed by those opposing the application have validity", including in relation to rates of alcohol-related assault, which it concedes "remain high in Byron Bay, despite a discernible recent downward trend", pre-loading and alcohol-related road crashes. The Applicant concedes that these issues "do give rise to some concern".
160. However, the Applicant contends that "responsible drinkers" who attend the main retail precinct of Byron Bay are "forced to shop for alcohol in a near monopoly situation" and that consumers who wish to purchase "well priced" ALDI branded liquor products must "travel to other ALDI stores in Ballina or Lismore". The Applicant submits that these local residents "complain about having to make a special trip" to satisfy their "reasonable expectation for competitively priced liquor products".
161. The Applicant submits that given the "competing considerations" in relation to potential alcohol-related harm and reasonable expectations of the community, "ALDI has carefully considered whether to make the present application" including by reference to an application by Dan Murphy's for a packaged liquor licence in Byron Bay which was refused by the Authority. The Applicant submits that its proposal can be distinguished from that application on the basis of the proposed type and scale of premises, trading hours, location and harm minimisation measures, and that it has reached the "considered belief" that it can "provide a modest liquor facility" whilst "not appreciably contributing to existing alcohol-related problems in Byron Bay".
162. The Applicant contends that the following "substantial public interest benefits" will flow from granting the Application:
 - a) Convenience – for customers of ALDI Supermarket who will be able to purchase liquor at the same time as they purchase groceries
 - b) Avoidance of special trips – to other ALDI outlets to purchase liquor
 - c) Choice – of a wider range of alcohol at competitive prices
 - d) Facilitating social/recreational opportunities – to meet "legitimate community demands" for alcohol to be consumed socially and/or recreationally
 - e) Strengthening the viability of other nearby businesses – through removing the need for customers to travel elsewhere to purchase competitively priced liquor and thereby attracting customers to more local stores
 - f) Economic spin-offs – through employment of "local staff"
 - g) Contributing to initiatives to moderate the drinking culture – through assistance to community organisations such as DrinkWise
 - h) Outlet for local producers – "such as those in McLaren Vale or Margaret River".
163. The Applicant concludes that "public demands and expectations" to be able to purchase liquor in conjunction with other supermarket shopping are "entitled to be accorded significant weight in the Authority's decision making and are made expressly relevant by s3(1)(a) of the Act".
164. In the Applicant's submission dated 18 March 2016, further detailed arguments and data are provided in support of the Application and the Applicant also provides consent to the conditions proposed by the Authority as well as a signed certificate of advertising.
165. The Applicant submits that a petition in favour of the Application signed by "1,500 shoppers" at ALDI Byron Bay (which is attached as Appendix 2 to this submission) constitutes "cogent evidence" that this supermarket attracts a "significant proportion of the population of Byron Bay". The Applicant submits that the broader

community has "undergone marked growth" over "the last 35 years" and provides Australian Bureau of Statistics (ABS) Census data showing that the population of Byron LGA grew from 10,914 persons in 1976 to 29,209 in 2011. The Applicant submits that "Department of Planning figures show that the population of the broader community is expected to grow in coming years" (to 36,200 persons in 2031) and that Byron Bay services other "smaller settlements of Ocean Shores" as well as its own local population.

166. The Applicant submits that "much of the economic activity" within the broader community is generated by tourism and that according to the Byron Shire Council website there were 1,376,000 visitors to the Byron LGA in 2013 "of whom 90 per cent visited Byron Bay".
167. The Applicant submits that SEIFA data suggests that the local and broader community is "in the lower-middle to middle class range", with a "quite well educated" resident population, although "income levels are modest". The Applicant contends that this is "significant" as "evidence shows that alcohol prices in Byron are inflated" which creates a "greater burden" for local residents. The Applicant provides ABS data showing that the median personal weekly income in the Byron LGA is \$477.00, as opposed to \$561.00 in NSW as a whole and that the median weekly household income in the LGA is \$885.00, as opposed to \$1,237.00 in NSW.
168. In relation to crime data, the Applicant contends that "Byron Bay is something of a special case" and quotes a BOCSAR Explanatory Note which highlights the impact on crime data of "high visitor populations". The Applicant submits that due to the large numbers of visitors to Byron Bay each year, crime rates based on number of residents are "highly likely to be unfavourably and significantly skewed".
169. The Applicant also submits that while rates of relevant crimes "remain high" there has been a "discernible downward trend" in alcohol related crime in the local and broader community since 2012, including a "near-halving" of alcohol-related non-domestic violence assault since 2012, from 212 incidents in the local community for the year ending September 2012 to 117 incidents for the year ending September 2015.
170. The Applicant states that of these 117 incidents of alcohol-related assault, "104 occurred at night" and "67 occurred on a weekend". The Applicant submits that this is "significant" as the proposed Premises will close at 6:00pm on weekend nights and trade no later than 9:00pm on weeknights and will therefore "be shut at times of greatest risk for alcohol-related violence" and also for "pre-fuelling".
171. The Applicant contends that it is "reasonable to infer" that "much of the alcohol related non-DV assault which occurs in Byron LGA is linked to late trading entertainment venues", and occurs "in the weekend night periods". The Applicant further contends that there is "little relation" between the Application and the "higher-than-average levels" of these incidents which are "associated with late night venues in Byron Bay".
172. The Application rejects the suggestion that granting the Application will "appreciably contribute" to "the phenomenon of pre-fuelling" on the bases that the Premises will close early; that "OLGR officers have given evidence" in past disciplinary complaint proceedings that "pre-loaders become evident on the street between 10:00pm and 1:30am"; that the location of the Premises within a supermarket provides a "disincentive" to those who would purchase liquor for pre-fuelling; and that refrigerated liquor will not be sold.
173. The Applicant provides tables of data sourced from BOCSAR in relation to "other crime rates" and submits on the basis of this data that "over the last three years rates of liquor

offences' have nearly halved, both in the LGA and suburb"; that rates of malicious damage to property have "reduced by approximately 30 per cent" and that rates of alcohol-related non-domestic violence assault have "nearly halved" since the Authority's decision to refuse "the Dan Murphy's application in 2012". The Applicant contends the Byron LGA is "not particularly vulnerable" to alcohol related domestic violence and that "to the extent" that the rate of this offence in the LGA is "above State averages" this is due to "the presence of large numbers of tourists in the population".

174. The Applicant submits that, as with crime rates, licence density statistics for the local and broader community are "unusually high" because they "take no account of the numbers of tourists" in Byron Bay or the fact that the suburb's retail outlets serve "a much wider trade area". The Applicant provides licence density statistics which it contends are "adjusted to take account of the number of visitors to the Shire and to Byron Bay suburb over a year" and which suggest that the rate of packaged liquor licences per 100,000 persons in the Byron LGA is 28.81 (as opposed to the unadjusted figure of 37.65) and that the rate for the suburb of Byron Bay is 30.70 (as opposed to the unadjusted figure of 80.66).
175. The Applicant notes that in the report of Mr Adam Purcell (attached as Appendix 4 to its submission) it is found that the "Beach Hotel Bottle Shop offers high-end wine and a very small range of liquor products" while the "remaining three outlets (two of which are owned by the Pearson family interests)" sell liquor which is "on average, 10 per cent to 20 per cent more expensive than equivalent outlets in Ballina". The Applicant submits that the last packaged liquor licence granted in "Byron Bay CBD" was in 1981 and that given the growth of the Byron LGA since that time, the grant of "this modest application" is "reasonable" in order to "cater to the demands of that growing population".
176. The Applicant cites health data sourced from Health Stats NSW which shows that a downward trend has occurred in "rates of alcohol-related hospitalisations in Byron Shire", from SSR 115.6 in the period from 2006 to 2008, to SSR 94.7 in the period from 2012 to 2014. The Applicant attributes this and the "discernible improvement in alcohol-related crime rates" to the implementation of the Byron Bay Alcohol Action Plan in 2013. The Applicant states that this plan implemented, *inter alia*, restrictions on high strength drinks and sales of large quantities of alcohol at on-premises venues, employment of RSA Marshalls in on-premises venues and a 1:30am lock-out on late-night trading venues.
177. The Applicant refers to an OLGR evaluation of the Byron Bay Alcohol Action Plan (attached to the submission as Appendix 5), which found that the Plan resulted in, *inter alia*, a 24.7 per cent reduction in alcohol-related non-domestic violence assault in Byron Bay and a 60 per cent reduction in rates of "supply liquor to juveniles" offences.
178. The Applicant also repeats its previous contentions in relation to the type, scale, trading hours, location and management strategies of the Premises in support of its view that granting the Application is "unlikely to exacerbate rates of crime and anti-social behaviour in Byron Bay" and will rather "cater to public expectations".
179. The Applicant refers to letter of support received from 4 members of public and submits that these letters "provide credible evidence of the current inconvenience facing residents of Byron Bay".
180. In response to the submission from Police, the Applicant submits that Police "appear to play down the public interest arguments" and "misapprehend the extent of public support" for granting the Application, by their claim that "special trips" are "not uncommon in country areas". The Applicant submits that the public have a "reasonable expectation" for "competitively priced liquor" which is "conveniently located". The

Applicant also submits that the references by Police to unfavourable BOCSAR data are "misleading if viewed in isolation" due to the presence of tourists in Byron Bay.

181. In response to submissions from members of the public who oppose the Application, the Applicant notes first that "4 are made by incumbent liquor retailers" and that Mr Darren Pearson (who provided the Authority with two adverse submissions in relation to the Application) is "a director of Bravale Pty Limited which is the registered proprietor of the business names 'The Cellar Byron Bay' and 'The Cellar Byron Plaza'". The Applicant contends that "the Pearsons have a clear pecuniary self interest in the refusal of this application". The Applicant further submits that Ms Hannah Spalding is "the current licensee of the Railway Friendly Bar" which is "owned by interests associated with the Mooney family, which also owns the Great Northern Hotel".
182. The Applicant submits that according to the report of Mr Purcell, "there is an uncompetitive market for liquor in Byron Bay with prices being generally around 10-20 per cent higher than what would be expected in comparable locations, such as Ballina".
183. The Applicant observes that Mr Pearson compares the Application to an application made by Dan Murphy's for a packaged liquor licence in Byron Bay which was refused by the Authority in 2012. The Applicant submits that this Application is "very different" to the latter in terms of "the accepted 'low risk' nature of ALDI's business model"; the smaller scale and reduced trading hours of the proposed Premises; the type of licensed business proposed; and the "specific measures" agreed to by the Applicant "including the adoption of the BBLA Alcohol Action Plan measures".
184. In relation to the expressed concerns of members of the public in relation to under-age drinking, the Applicant submits that "whilst no liquor retailer can absolutely prevent the occurrence of secondary supply to minors", the potential for the Applicant to reduce the likelihood of secondary supply is assured by the absence of refrigerated products, the presence of CCTV surveillance, and the use of local staff members.

REASONS

185. With regard to the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the local community comprises the state suburb of Byron Bay and the broader community comprises the Byron LGA.
186. This identification of the local and broader community is consistent with Authority Guideline 6 and the Authority's long standing practice. While the Applicant has posited a local community that encompasses several state suburbs, and noting that the Act does not provide a definition of "local community" the Authority prefers its formulation of the local community by reason of regulatory consistency and also that defining the local community in the manner proposed by the Applicant would tend to lose any "local" character in the assessment process.
187. Applying the social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local or broader communities.

Positive Benefits

188. The Authority accepts the Applicant's contention that granting this Application will provide some additional measure of convenience to those members of the local and broader community who wish to purchase packaged liquor at the same time as buying their

groceries from the ALDI Supermarket, as they will be able to do so during the licensed trading hours of the Premises.

189. On the basis of the submissions made by the Applicant in the CIS (including the petition) and the additional responses from the Applicant, the Authority is satisfied that some additional convenience is established by the Applicant in respect of those shoppers who wish to engage in "one-stop" liquor shopping within the ALDI Supermarket and who wish to avoid "special trips" to purchase ALDI branded liquor.
190. The Authority notes the Applicant's submission that granting this Application will provide customers with greater choice through access to a wider range of alcohol at competitive prices. The Authority also notes the Applicant's submission, based on the report of Mr Purcell, that packaged liquor in Byron Bay is "on average 10-20 per cent more expensive" than equivalent products sold in Ballina.
191. The contended benefit of increased choice and competition will mainly arise through the availability of a small range of competitively priced ALDI-branded liquor products at the Supermarket. That is, there will be some enhanced choice of liquor products from granting the licence, particularly with respect to ALDI-branded products given that the closest ALDI Supermarket is some distance away, in Ballina, which the Authority notes on the basis of publically available records from Google is located about 30 kilometres away or around 30 minutes' drive.
192. The Authority accepts that granting the Application will provide moderate benefits to the local and broader community and promote the object of section 3(1)(a) of the Act (catering for the expectations, needs and aspirations of the community) through providing the local and broader community with convenient access to a small range of competitively priced ALDI-branded liquor products.
193. The Authority also notes the Applicant's submissions in relation to the population growth and high tourist traffic in the local and broader community and is satisfied that adequate availability of packaged liquor is consistent with the need to "cater to the demands of that growing population", which may also be said to promote the object of section 3(1)(a) of the Act in this sense as well.
194. Increasing choice for the local community through ALDI branded products may also be said to develop, to a modest extent, the local retail liquor industry for the purposes of section 3(1)(b) of the Act.
195. While the Authority has considered the Applicant's contention that more "local staff" will be employed to service the Supermarket's licensed liquor department if the Application is granted and if this occurs this may provide some small contribution to the economic viability of the local community, it is not clear on the basis of the Applicant's submissions what additional staff the supermarket will require to stock liquor products as distinct from general supermarket operations, and how many persons would be hired from within the local community and when. The Authority gives little weight to this contended benefit for this reason.
196. The Authority is satisfied that there has been some considerable degree of community support demonstrated among ALDI Byron Bay shoppers by way of a petition with around 1,500 signatures, as well as the 7 written submissions in support of the Application received by the Authority.
197. There has also been some community opposition to the Application, on the basis of the 20 written submissions objecting to the Application, noting in particular the submissions

from Mayor Richardson and Nicqui Yazdi of BUDDI, as well as a submission from the Local Area Command of NSW Police and local representatives of the Last Drinks Coalition.

198. While local shoppers signing a petition provide evidence as to the expectations, needs and aspirations of this section of the local community for the purposes of section 3(1)(a), those responses warrant less weight when making an objective assessment of alcohol-related impacts affecting the community as a whole. Local Police may be expected to have some degree of specialised knowledge and expertise in relation to the prevailing impacts and risk of alcohol related impacts in the community in which they operate. The Police submission has been given additional weight in this case in that it is supported by Police data and also reinforced by the BOCSAR crime and crime mapping data for the communities.
199. The Authority has considered the Applicant's consultant submission that prices in Byron Bay are between 10-20 per cent more expensive than Ballina. The difficulty the Authority has with this submission is that the supporting data provided is limited. While the Authority considers it generally credible to assert that the new ALDI liquor business will more likely than not bring some additional competitive tension to the incumbent liquor providers (and hence benefit the communities) the extent of that benefit is difficult to assess without detailed information comparing the lines of home branded and specials on mainstream brands that are likely to be supplied from the new outlet. That submission can only be given limited weight on the material before the Authority.
200. The Authority has also considered the Applicant's submission that granting the Application will allow the proposed new business to service community demands for alcohol in conjunction with social and recreational opportunities. The Authority accepts that as a general proposition, alcohol consumption is associated with social and recreational activity but the nature and extent of this amorphous community benefit has been neither specified nor substantiated to any great extent and little weight is given to it on the basis of the material before the Authority.
201. The Authority has considered, but is not satisfied as to contended community benefit posed by the Applicant by reference to sales from "local producers". Although the Applicant makes reference to producers from McLaren Vale (South Australia) and Margaret River (Western Australia), the Authority does not accept that these submissions indicate a discernible benefit to the relevant local or broader communities in this instance.
202. The Authority finds generally credible the submission that the ALDI store may contribute to community initiatives that help to moderate the negative impacts of alcohol and accepts that ALDI has done so in the past, however this contended benefit also suffers from a lack of specificity and certainty as to the nature and timing of any benefits provided to the relevant local and broader communities at issue in this instance and this submission is given little weight.

Negative Impacts

203. The Authority is satisfied, on the basis of the submission from local Police data and the data before the Authority from BOCSAR for the Byron LGA, that alcohol-related crime in the local and broader community remains a serious cause for concern despite having improved over the last three years.
204. The Authority notes and accepts as credible the contention made by Police that "alcohol is the key attributing factor in alcohol related violence and anti-social behaviour in Byron

Bay" and that "pre-fuelling" before attending late night venues is prevalent among young people and tourists in the local community.

205. The Authority also accepts the Applicant's submission that BOCSAR data reveals that the rates of reported alcohol-related offences have "decreased significantly" in the Byron LGA over the previous three years.
206. However, the Authority is satisfied that data sourced from the latest BOCSAR Report (for the year to June 2015) on alcohol-related crime by local government area that alcohol related crime is still occurring across the broader community at consistently higher rates than averages recorded across NSW.
207. The Authority is satisfied, on the basis of this report, that:
 - a) the rate per 100,000 persons of *alcohol related domestic assault* incidents within the Byron LGA was 168.1 for this period, above the NSW rate of 122.6 per 100,000 persons
 - b) the rate of *alcohol related non-domestic assault* incidents in the LGA, at 495.0, was well above the rate of 144.0 per 100,000 persons across NSW as a whole
 - c) the rate of *alcohol related assault police* incidents in this LGA was 34.2 which is also well above the rate of 18.2 per 100,000 persons recorded across NSW as a whole
 - d) the rate of *alcohol related offensive behaviour* incidents in the LGA was 719.2 per 100,000 persons, many times above the rate of 88.2 for NSW as a whole.
208. While the Authority accepts that the Applicant has put in place well-considered harm minimisation strategies to help combat what seems to be a culture of excessive or public drinking among certain groups in Byron Bay, such as CCTV surveillance, staff training beyond RSA training requirements under the legislation, and practices to ensure that minors are not supplied with liquor from the Premises, the Authority is not satisfied that in the context of this location, such measures will sufficiently counteract the misuse and abuse of alcohol (particularly in "pre-fuelling") which, on the material before the Authority, appears to be a significant and ongoing problem in the local and broader community.
209. The Authority accepts, on the basis of the Applicant's submissions, public submissions and the OLGR Evaluation of the Byron Bay Alcohol Action Plan (provided by the Applicant) that levels of alcohol-related crime in the local and broader community are improving, and is satisfied that local efforts including by the Byron Bay Liquor Accord and by Police have had a positive impact on the well-being of the community in this regard.
210. However, given the particular popularity of Byron Bay with international and domestic tourists and young people (which is consistent with both the Police and Applicant submissions), the cogency and consistency of the evidence from members of the public and Police as to the prevalence of public drinking and "pre-fuelling", and the continuing documented high rates of alcohol-related crime, the Authority is satisfied that Byron Bay remains a very challenging environment for the management of alcohol-related crime and anti-social conduct.
211. Guideline 6 communicates to Applicants that the Authority will consider the location of a new licensed business when assessing overall social impact. The location of the proposed new ALDI liquor store, in the centre of the town, makes this outlet particularly likely to supply visitors to the town travelling to the store on foot. The location is particularly problematic given the concentration of alcohol related crime in the CBD, supported by the local Police data.

212. The supermarket is located near backpackers accommodation, and aside from this the Authority is satisfied that the business is likely to be a popular source of competitively priced retail liquor to persons staying temporarily in the town and walking to the venue by foot. The location of the proposed business is also objectively problematic by reason of its situation within a declared Alcohol Free Zone, an area so designated by Council in an attempt to manage public drinking in that part of the local community.
213. The Authority is satisfied on the basis of its licensing records that the licence density of packaged liquor licences in the Byron LGA (at 44.47 per 100,000 persons) is above the NSW state average (at 32.85 per 100,000 persons). While those figures do not suggest that licence density rates are particularly problematic, they do support the Police contention that liquor is readily available in the local and broader community and that there is no "monopoly" (or oligopoly) in place. That much is also evident from licensing records that indicate a range of licensed premises currently authorised to sell packaged liquor in the communities.
214. In making these findings, the Authority has considered the Applicant's submissions in relation to the high transient tourist population of the local and broader community which it contends skews crime data for the Byron LGA.
215. High tourism is an established feature of this community and a significant consideration, rather than a mitigating factor, in determining the likely overall social impact of granting the Application. The fact that the local community draws large numbers of tourists and young adults to the CBD makes the location of this proposed new outlet more problematic than less.
216. While the Authority is satisfied that the high rates of alcohol related crime in this LGA are partly attributable to visitors to Byron Bay, the Authority is not satisfied that this provides a basis on which to conclude that those likely negative impacts should be discounted. High rates of alcohol related crime are matters with respect to which the local and broader communities remain over exposed.
217. The Authority accepts and has taken into account that the Applicant proposes a number of measures over and above the minimum requirements of the legislation that are factors which may be accepted as objectively reducing or minimising the scope or risk of alcohol related harm arising from the operation of the business in question.
218. The Authority accepts that the smaller scale of the Premises provides an objective mitigating factor, in that the licensed area of the Premises will constitute approximately only 32sqm (as indicated by the Applicant in the CIS), accessible only through an existing ALDI Supermarket.
219. The more limited range of products, by comparison to mainstream liquor stores, may also be a factor that reduces the popularity of this liquor business – although ALDI indicates that it will sell both home brands and run occasional limited special promotions on mainstream brands.
220. The Authority notes that the proposed trading hours (with an 8:00pm closing time on most weeknights and a 6:00pm closing time on Saturday and Sunday) are less expansive than those potentially available to packaged liquor outlets (who may, if licensed, sell or supply liquor until 10:00pm). This provides some further constraint on the capacity of liquor sold on traditionally higher risk evenings to contribute to potential problems of pre-fuelling and public drinking.

221. The non-refrigeration condition agreed by ALDI (which is standard to ALDI packaged liquor applications) is another harm mitigation factor that is accepted by the Authority as assisting in discouraging the impulse consumption of liquor purchased from this Supermarket at or near the Premises. That is, patrons may be less likely to drink those liquor products that are usually consumed cold in public places and take it home instead. Police counter that pre-fuelling (the practice of young adults drinking at home or in public places before attending licensed venues) is a particular problem in Byron Bay. The Authority gives some weight to the local knowledge of Police in this regard and accepts that pre-fuelling is a particular problem in this local community, noting also the number and variety of late trading licensed venues in the CBD.
222. The Authority has considered certain operational measures that the Applicant proposes to implement at the proposed new business. Harm reduction measures are detailed in business planning documents, *House Policy* and the *Management Policies and Strategies*, which form part of the Application. The Authority also notes that the Applicant consented to the proposed imposition of certain standard conditions proposed by Authority staff in respect of new packaged liquor businesses and noted above. The Authority further accepts the Applicant's assurance that the Applicant would, if the Application is granted, operate in accordance with the voluntary measures implemented by the Local Liquor Accord which the Authority considers has likely had positive impacts on the management of liquor supply in the local community.
223. The Authority also accepts that the location of the liquor business within a likely busy supermarket will provide a measure of passive surveillance. However, while the Authority is satisfied that ALDI staff would not knowingly sell liquor to minors or intoxicated persons, there will likely be, in practice, little that the Applicant or its staff can do to monitor or prevent the abuse of packaged liquor away from the point of sale or the immediate location of the premises.
224. The Police submissions with regard to pre-fuelling and the local Police data showing the substantial role liquor plays in events involving contact with the Police in the Byron Bay Sector satisfy the Authority that the abuse of packaged liquor remains problematic in this local and broader community.
225. The Applicant has made submissions to the effect that granting this one more licence will not necessarily lead to greater liquor consumption in the local or broader communities.
226. There is insufficient data before the Authority to discern whether the addition of this one new licence will mean an overall increase, decrease or no change to the overall consumption of liquor or the incidents of alcohol related crime across the relevant local or broader community.
227. New South Wales does not mandate the collection of wholesale liquor sales data that has enabled researchers in other jurisdictions (see for example, as noted Authority Guideline 6 Liang W and Chikritzhs T: "Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability" (2011) *Drug and Alcohol Review* (September 2011)) the relationship between increasing volumes of liquor sold in a local government area and assault rates.
228. However, assuming that this business does no more than compete for local market share, the scope for *this* business to *contribute* to prevailing negative social impacts in *these* local and broader communities is of elevated concern to the Authority, by reason of the location of the business and the prevailing circumstances of this local and broader community. Liquor sold from the premises is likely to contribute, along with the

incumbent licensees, to particularly challenging circumstances for the management of alcohol related crime and anti-social conduct.

CONCLUSION

229. Having considered the Authority's findings on the positive benefits and negative impacts posed by granting the Application, the Authority is *not satisfied*, on the material before it, that granting this Application would *not be* detrimental to the well-being of the local or broader community for the purposes of section 48(5) of the Act, particularly the local community.
230. For this reason, the Application is refused under section 45 of the Act.
231. In making this decision the Authority has considered all of the statutory objects provided by section 3(1) of the Act and has had regard to all of the considerations prescribed by section 3(2) of the Act but has given weight to section 3(2)(a) - the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and section 3(2)(c) - the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.



DB Armati
Deputy Chairperson

DATED: 31 May 2016