



Grant Cusack  
c/o Hatzis Cusack Lawyers  
Level 9, 68 Pitt Street  
Sydney NSW 2000

15 September 2016

Dear Mr Cusack,

**APPLICATION NO:** 1-4174989132  
**APPLICATION FOR:** New Packaged Liquor Licence  
**PROPOSED TRADING HOURS:** Monday to Wednesday 8:00AM – 8:30PM  
Thursday 8:00AM – 9:00PM  
Friday 8:00AM – 8:30PM  
Saturday 8:00AM – 8:00PM  
Sunday 10:00AM – 8:00PM

**APPLICANT:** ALDI FOODS PTY LIMITED  
**PROPOSED LICENSED PREMISES  
NAME:** ALDI Warriewood

**PREMISES LOCATION:** Warriewood Square Shopping Centre  
Shop MM3 Jacksons Road  
Warriewood, NSW 2102 (Premises)

**ISSUE:** Whether to grant or refuse an application for  
a new packaged liquor licence.

**LEGISLATION** Sections 3, 29, 30, 31, 40, 45, 48 *Liquor Act  
2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION - APPLICATION FOR  
NEW PACKAGED LIQUOR LICENCE – ALDI WARRIEWOOD**

The Independent Liquor and Gaming Authority considered the Application at its meeting on 17 August 2016 and pursuant to section 45 of the *Liquor Act 2007* (Act), has decided to **grant** the Application number 1-4174989132 subject to the following conditions:

1. Trading Hours  
Monday to Wednesday 8:00AM – 8:30PM  
Thursday 8:00AM – 9:00PM  
Friday 8:00AM – 8:30PM

Saturday 8:00AM – 8:00PM

Sunday 10:00AM – 8:00PM

2. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 2:00 AM and 8:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
3. Retail Sales

Good Friday	Not permitted
December 24 <sup>th</sup>	Normal trading Monday to Saturday, 8:00AM – 10:00PM Sunday
Christmas Day	Not permitted
December 31 <sup>st</sup>	Normal trading
4. The licence cannot be exercised unless and until the Independent Liquor & Gaming Authority has been provided with evidence that the premises at this location are complete and ready to trade.
5. The licence cannot be exercised unless and until the Independent Liquor and Gaming Authority has been notified of the appointment of a manager to the licence.
6. Upon evidence of completion of the premises being provided to the Independent Liquor and Gaming Authority, the licensee or its representative must join and be an active participant in the local liquor accord.
7. The business authorised by this licence must not operate with a greater overall level of social impact on the well being of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
8. The licensee will ensure the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.
9. The licensee will not sell refrigerated liquor products from the licensed premises.
10. The licensee will ensure compliance with the Management Policies and Strategies and House Policy documents lodged with the Independent Liquor and Gaming Authority and will provide to the Authority copies of those documents as they are developed or updated from time to time.

If you have any enquiries about this letter please contact case manager via email to [santina.causa@ilga.nsw.gov.au](mailto:santina.causa@ilga.nsw.gov.au)

Yours faithfully



Philip Crawford  
**Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**

## STATEMENT OF REASONS

### Material Before The Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high volume jurisdiction.
2. In making this decision, the Authority has considered the packaged liquor licence application filed on 10 March 2016 (Application), the accompanying community impact statement (CIS) and all submissions received in relation to the Application. As foreshadowed in Authority Guideline 6, the Authority has also had regard to relevant liquor licensing records and licence density data maintained by Liquor and Gaming NSW (LGNSW), Bureau of Crime Statistics and Research (BOCSAR) crime data and Australian Bureau of Statistics (ABS) data pertaining to the local and broader communities sourced by licensing staff from publicly available sources. That material is listed and briefly summarised in the Schedule.

### Summary of Further Submissions

3. Report to the Authority dated 1 June 2016 from Compliance Branch of LGNSW, advising that the Application was assessed using the Environment and Venue Assessment Tool (EVAT). This means that LGNSW have not performed any specific assessment of the Application.
4. Submission from Senior Constable Chris Millar, Licensing Unit of the Northern Beaches Local Area Command (LAC) on behalf of NSW Police (Police) dated 11 May 2016 advising that Police have no objection to the Application but request that the licence be subject to the following conditions:
  - (a) The licensee will ensure the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier;
  - (b) The licensee will not sell refrigerated liquor products;
  - (c) All sales being made from within the licensed area and through a designated checkout counter.
5. Submission from Ms Kristy Brown, Acting Principal Development Compliance Officer for Pittwater Council (Council) dated 12 April 2016 advising that on 2 March 2009, Council adopted a Liquor Licensing Policy which outlines the liquor trading hours and locations that Council believes are appropriate for certain licence types. Council is satisfied that the Application is consistent with the hours of operation outlined in Complying Development Certificate (CDC) 15/2205/01 issued for the fit out of the ALDI store by Steve Watson & Partners.
6. Council Policy No 175 for Liquor Licence Applications (Policy of Operations and Procedures) as amended on 17 October 2011.
7. Submission from Brett Tobin c/o Hatzis Cusack Lawyers on behalf of the Applicant dated 30 June 2016. In this 15-page document the Applicant consents to the eight conditions proposed by licensing staff and discusses the location of the Premises,

growth in Warriewood and surrounding areas, data for the expanded Warriewood Square Shopping Centre, contended positive benefits of granting the Application, prevailing licence density, Socio-Economic Indexes For Areas (SEIFA) data and the demographic profile of the suburb of Warriewood and the Pittwater Local Government Area (LGA), BOCSAR crime data for the twelve months ended March 2016 for the suburb of Warriewood and the rate of alcohol related hospitalisations for the Pittwater LGA reported by Health Statistics NSW between 2001 and 2014.

8. The Applicant also addressed responses from various stakeholders and makes the following key submissions:
  - (a) Only two responses were received, one from Police and the other from Council.
  - (b) The first two Police proposed conditions are consented to but the third (requiring a designated checkout) is not and is “not necessary”.
  - (c) The usual form of response was received from NSW Roads and Maritime Services (RMS).
  - (d) Although Council Policy No 175 refers to packaged liquor licence trading hours being from 10:00am until 10:00pm seven days per week, the trading hours sought in this Application are “considerably more restrictive” than those hours. The Applicant contends that there is no evidence from Council, or any other sources, to suggest that trading between 8:00am and 10:00pm is likely to be at all problematic, nor is there any evidence before the Authority to suggest why Council’s policy for 10:00am opening should be imposed as a licence condition. Council’s policy is at “odds” with the trading hours permitted by the Act and notwithstanding this policy, the Authority has approved licenced trading hours at BWS at Warriewood, IGA Warriewood and ALDI Mona Vale prior to 10:00am.

## Legislative Framework

9. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the *Liquor Act 2007* (Act) and the *Liquor Regulations 2008* (Liquor Regulations). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
10. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
  - (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.*
11. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
  12. An application for a new packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required.
  13. Section 48(5) of the Act requires that the Authority must not grant the Application unless satisfied 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”.
  14. The Authority notes that the Applicant has posited a local community that extends beyond the suburb of Warriewood to included North Narrabeen, Narrabeen and Elanora Heights.
  15. In the absence of a statutory definition of “local community” and for the sake of regulatory certainty and consistency with the Authority’s long established practice, the Authority finds the relevant local community is the State suburb in which the licensed premises are located. This approach is preferable to a purported local community that incorporates a number of suburbs which would, in the Authority’s view, tend to lose any genuinely “local” focus when assessing overall social impact.
  16. The Authority notes that the Applicant has defined the “broader community” to be the Pittwater LGA and part of Warringah LGA. However, for the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Warriewood while the “broader community” comprises the responsible local government area, the Pittwater LGA.

## **Analysis of Relevant Facts**

17. The Authority is satisfied, on the basis of the Application and CIS before the Authority that, for the purposes of Section 40, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
18. The Authority is also satisfied, on the basis of the Application material, plans and conditions consented to by the Applicant in further submissions, that additional requirements for packaged liquor businesses under sections 30 and 31 of the Act have been satisfied.

19. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a packaged liquor licenced venue of the kind proposed in the Application material. No probity issues were raised with regard to the Applicant company following consultation with law enforcement agencies including Police and LGNSW.
20. The Authority is satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place with the commencement of licensed trading. This finding is made on the basis of the *House Policy, Management Policies and Strategies* and submissions provided by the Applicant.
21. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent is in place, on the basis of advice from Council dated 12 April 2016 that the Application is consistent with CDC 15/2205/01 issued for the fit out of the ALDI store by Steve Watson & Partners.

#### **Social Impact – Positive Benefits**

22. The Authority is satisfied, on the basis of the Application and CIS, that granting the new licence will provide some benefit of additional convenience to members of the local and broader community who wish to purchase packaged liquor whilst grocery shopping at ALDI.
23. The Authority accepts that the Applicant has distributed notices to the surrounding community and relevant stakeholders and has received no objections. In this sense granting the Application will be consistent with the “expectations, needs and aspirations of the community” in respect of the local community of Warriewood, being an object of section 3(1)(a).
24. The Authority notes that there are currently 5 packaged liquor licences in the suburb of Warriewood but is satisfied, on the basis of the Application material provided by the Applicant, that a packaged liquor licence within an ALDI grocery shop would somewhat diversify the range of options available to the local community who are seeking to purchase ALDI branded products. In this sense the Authority is satisfied that the proposed new licensed area within an existing ALDI supermarket will develop, in the public interest, the liquor industry that serves the local and broader community, for the purposes of section 3(1)(b) of the Act.
25. The other purported positive community benefits are less well established on the material before the Authority and have been given little weight.

#### **Social Impact – Negative Impacts**

26. Having reviewed all the material, the Authority is satisfied that over time there will likely be some contribution from the liquor sold at the licensed business to alcohol related crime, disturbance or impact on amenity from a minority of customers who abuse packaged liquor purchased from the Premises.
27. The Authority notes that the trading hours are reasonably extensive. This is a factor that objectively extends the scope for adverse impact from the operation of this business over time.

28. The 8:30pm closing time Monday through Wednesday and Friday and the 8:00pm closing time on Saturday and Sunday provides some constraint on the capacity of liquor sold (particularly on higher risk weekend evenings) to contribute to potential problems such as “pre fuelling” or public drinking.
29. The Authority is satisfied that ALDI’s “no refrigeration” condition may work to reduce adverse social impacts from the impulse consumption of liquor purchased from the supermarket in public places or “pre-fuelling” by young adults *en route* to licensed premises in the local or broader community.
30. The BOCSAR Crime Maps for the period between April 2015 and March 2016 indicate that the Premises is *not located within any hotspots* for incidents of *domestic assault* and *non-domestic assault* but is located *on the edge of a low and medium density hotspot* for incidents of *malicious damage to property*.
31. The licence density information provided by the Applicant with the CIS based on publicly available licensing and ABS data indicates that Pittwater LGA has **43.74** packaged liquor licences per 100,000 persons while the state suburb of Warriewood has **65.08** per 100,000 persons, compared to NSW as a whole which has **34.44**. However, those density rates have not translated into higher rates of crime in the broader community or concentrations of crime at the local level, nor are there higher rates of adverse alcohol related health data.
32. While licence density is higher in the broader community, the Authority accepts the Applicant’s submission that of the four packaged liquor licences in the local community, two are subject to a condition restricting sales to taking orders over the internet, mail order, facsimile or telephone and the remaining two are associated with a supermarket.
33. The Authority is satisfied, on the basis of the ABS SEIFA data provided by the Applicant with the CIS, that both the local and broader community are relatively advantaged, raking in the most advantaged 10<sup>th</sup> decile on the Index of Relative Socio-Economic Advantage and Disadvantage.
34. The Authority is reassured by the BOCSAR crime statistics for the 12 months ended March 2016, provided by the Applicant with the CIS, which demonstrate that the suburb of Warriewood has significantly lower rates of alcohol related crime than NSW for incidents of *alcohol-related DV assault*, *alcohol-related non-DV assault*, *alcohol-related assault*, *disorderly conduct* and *liquor offences*.
35. The scale of the proposed licensed area is a mitigating factor. The Authority is satisfied on the basis of CIS that the licensed business area is relatively small, occupying approximately 31 square metres. The licensed area will be adequately separated from the rest of the supermarket ensuring access to the licensed are can be easily monitored.
36. Finally, the Authority is satisfied on the basis of the documents submitted by the Applicant titled “House Policy” and the “Management Policies and Strategies” that the Applicant has implemented comprehensive and well developed harm minimisation measures. These documents provide a mechanism whereby staff members will be

adequately trained with a view to constraining the impact of the licensed business by avoiding service to minors and intoxicated persons.

## Conclusion

37. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision. The interested parties are NSW Police, the Licensee, Council, RMS, neighbouring occupiers, NSW Health and Family and Community Services and all other parties required to be consulted under the legislation.
38. Having considered together the positive benefits and negative impacts that the Authority are satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
39. The Application is granted pursuant to section 45 of the Act.
40. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) – including (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.

Decision Date: 17 August 2016



Philip Crawford  
**Chairperson**

### Important Information:

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

An application to NCAT must be made within 28 days of notice of this decision being published in the liquor and gaming website

<https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilqa/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

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

## SCHEDULE

### Material Before The Authority

1. Application Form lodged on 10 March 2016.
2. Copies of stakeholder notices notifying the Application to various stakeholders as required by the liquor legislation – including Police, Council and the site notice.
3. CIS document and supporting material dated 10 March 2016. Briefly, the Applicant's contentions on overall social impact include the following:
  - (a) The proposed licensed Premises will be situated within an ALDI Supermarket, which in turn will be located in the Warriewood Square Shopping Centre.
  - (b) The proposed licensed liquor sales area will comprise approximately a "small" 31 square metres of the existing ALDI supermarket.
  - (c) The liquor sales area will be "clearly defined" including by way of partitioning and liquor will be displayed on shelving and display units within the liquor sales area.
  - (d) Liquor to be sold at the Premises will "principally comprise" a limited range of ALDI branded products (including beers, wines and spirits) and on occasion, a small selection of non-ALDI branded products may be available as "special products" for a limited time until sold out. Approximately 100 lines will be sold, substantially fewer than a typical liquor store.
  - (e) It is not proposed that liquor products will be sold refrigerated.
  - (f) Parking facilities are provided at the shopping centre for use by customers.
  - (g) The majority of customers of the liquor sales area will be customers of the supermarket, most of who arrive and depart by car and park in the shopping centre carpark, who will have the added convenience of also being able to purchase liquor.
  - (h) Policies will be in place, including a detailed House Policy, in respect of the responsible service of liquor and all staff involved in the sale and supply of liquor will complete an approved Responsible Service of Alcohol (RSA) course.
  - (i) Measures will be in place to ensure that minors do not gain access to liquor, as well as security measures such as CCTV surveillance of the licensed area.
4. Additional Information about the Application and CIS attached to the CIS dated 10 March 2016. In this 13-page document, the Applicant provides information about ALDI stores, the role of the corporate licensee, approved manager and staff, the position with Council, section 30 of the Act, the location of nearby community buildings, facilities and places, notification of stakeholders and consultation and the contended "benefits" of granting the Application.

5. In this document, the Applicant also discusses (by apparent reference to the social impact factors identified in Authority Guideline 6) the type of licensed business proposed, scale of the business, licensed trading hours sought, location of the Premises, growth in the suburb of Warriewood Valley and the Ingleside Release Area, statistics in relation to the expansion of Warriewood Square Shopping Centre, prevailing licence density, ABS SEIFA scores for the LGA and Warriewood and measures that will be implemented on the Premises to reduce the potential for alcohol-related harms.
6. The Applicant contends that granting the Application will result in the following “substantial” public interest benefits:
  - (a) Convenience/one-stop shop;
  - (b) Need;
  - (c) Choice and introduction of new product lines;
  - (d) Provide a small modern supermarket liquor department offering a range of liquor at competitive prices;
  - (e) Avoidance of special trips/other packaged liquor facilities inconveniently located for customers of the proposed ALDI Supermarket;
  - (f) Reduce escape expenditure;
  - (g) Increase in support/customer of the local shopping centre;
  - (h) Reduction in traffic;
  - (i) Public safety;
  - (j) Increase in employment;
  - (k) Economic spin-offs
  - (l) Contributing to Initiatives to moderate the drinking culture.
7. Additional information about the proposed 6-hour closure period attached to the CIS dated 10 March 2016. In this five-page document the Applicant discusses (relevantly) the proposed 6-hour closure period, the “proposed mode of operation of the Liquor Store”, 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”.
8. Geographical Map depicting the radius in which notification of the Application was distributed.
9. List of stakeholders and special interest groups notified of the Application.
10. ALDI Liquor *NSW House Policy* for the responsible service of alcohol and *Management Policies and Strategies* for ALDI Liquor (undated).

11. Submission from Aboriginal Affairs Department of Education NSW dated 18 January 2016 advising that Aboriginal Affairs has no objection to the Application on the basis that the NSW Aboriginal Land Council and the Local Aboriginal Land Council have also been notified of the proposal and objection process.
12. Submission from RMS dated 19 January 2016 advising, inter alia, that data for the Pittwater LGA indicates that during 2013 there were 15 alcohol-related crashes, resulting in 1 casualty.
13. Google geographical map depicting an aerial view of the location of the Premises.
14. Plan of the proposed licensed area.
15. BOCSAR Crime Maps based upon data from April 2015 to March 2016 detailing hotspots for the concentration of offences near the location indicating that the Premises:
  - (a) Is *not* located within a hotspot for incidents of *domestic assault*
  - (b) Is *not* located within a hotspot for incidents of *non-domestic assault*
  - (c) Is located *on the edge of a low and medium density hotspot* for incidents of *malicious damage to property*
16. Liquor licensing records indicating that the suburb of Warriewood already has 5 packaged liquor licences.
17. Report to the Authority dated 1 June 2016 from Compliance Branch of the Office of LGNSW.
18. Submission from Senior Constable Chris Millar, Licensing Unit of the Northern Beaches LAC on behalf of Police, dated 11 May 2016.
19. Submission from Ms Kristy Brown, Acting Principal Development Compliance Officer for Council dated 12 April 2016.
20. Council Policy No 175 for Liquor Licence Applications amended on 17 October 2011.
21. Submission from Brett Tobin c/o Hatzis Cusack Lawyers on behalf of the Applicant dated 30 June 2016.