

Mr Grant Cusack
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26 October 2017

Dear Mr Cusack

Application No.	1-5607126340
Application for Trading hours	Removal of a Packaged Liquor Licence <u>Regular Trading Hours</u> 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 <u>Public Holidays Trading Hours</u> Monday to Friday 8:00am – 8:00pm
Licence name	ALDI Maitland
Applicant	ALDI FOODS PTY LIMITED
Current Premises	Elgin St MAITLAND NSW 2320
Proposed Premises	Shop MM01 Hunter Mall 405 High Street MAITLAND NSW 2320
Issue	Whether to grant or refuse an application for the removal of a packaged liquor licence
Legislation	Sections 3, 11A, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i>

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

The Independent Liquor and Gaming Authority has considered application number 1-5607126340 seeking the removal of a packaged liquor licence (“Application”) and pursuant to section 59 of the *Liquor Act 2007* (“Act”) has decided to **approve** the removal of the licence, subject to the imposition of the following conditions:

1. The premises can only trade between 8:00am and 8:00pm on public holidays (other than public holidays that fall on a Sunday, when it can only trade between 10:00am and 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 2:00am and 8:00am 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.

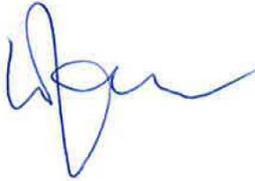
3. Restricted trading and NYE (std)
 - Retail Sales
 - Good Friday Not permitted
 - December 24th Normal trading Monday to Saturday, 8:00am to 10:00pm Sunday
 - Christmas Day Not permitted
 - December 31st Normal trading
4. The licensee or its representative must join and be an active participant in the local liquor accord.
5. The liquor licence remains at Elgin St MAITLAND NSW 2320 subject to the same conditions and trading hours that were immediately in force before this approval was granted until such time as the Independent Liquor and Gaming Authority is notified that the licence has been moved.
6. The premises is to be operated at all times in accordance with the ALDI Management Policies and Strategies and House Policy documents, as submitted to the Independent Liquor and Gaming Authority in support of the licence application and as may be varied from time to time after consultation with the Alcohol Licensing Enforcement Command of NSW Police. A copy of these documents is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
7. The Independent Liquor & Gaming Authority approved the removal of the licence to Shop MM01, Hunter Mall, 405 High Street MAITLAND NSW 2320 on 25 October 2017.
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. Closed-circuit television (CCTV) system
 - 1) The licensee must maintain a closed-circuit television (CCTV) system at the supermarket/general store in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the supermarket/general store is required to close,
 - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
 - (c) any recorded image must specify the time and date of the recorded image,
 - (d) the system's cameras must cover the following areas:
 - (i) all entry and exit points to the supermarket/general store, and
 - (ii) all publicly accessible areas (other than toilets) within the licensed premises.
 - 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

Please note that the licence cannot be exercised unless and until the Authority has been:

- provided with evidence that the Proposed Premises is complete and ready to trade, and
- notified of the appointment of an approved manager to the licence or that the licence has been transferred to an individual licensee.

If you have any questions about this letter, please contact the case manager via email to michael.fabits@liquorandgaming.nsw.gov.au.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

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

Statement of reasons

Decision

1. On 22 February 2017 the Independent Liquor and Gaming Authority (“Authority”) received from ALDI Foods Pty Limited (“Applicant”), through Liquor and Gaming NSW (“LGNSW”), an application for removal of a packaged liquor licence (“Application”) from its current premises at Elgin Street, Maitland NSW 2320 (“Current Premises”) to Shop MM01, Hunter Mall, 405 High Street Maitland NSW 2320 (“Proposed Premises”) trading as ALDI Maitland.
2. Pursuant to section 59 of the *Liquor Act 2007* (“Act”), the Authority has decided to approve the Application.
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 29, 30, 31, 40, 45, 48 and 59 of the Act, and relevant provisions of the *Liquor Regulation 2008* (“Regulation”).

Material considered by the Authority

4. The Authority has considered the Application and the accompanying Community Impact Statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. As foreshadowed in the Authority’s *Guideline 6*, the Authority has also had regard to relevant LGNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, NSW Department of Health data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, obtained by LGNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule and briefly described where appropriate.

Legislative framework

8. The Authority has considered the Application in accordance with the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3(1), are 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, to facilitate the balanced development, in the public interest, of the liquor industry, and to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
10. In pursuit of these objectives, section 3(2) requires the Authority to have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti social behaviour), the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and

consumption of liquor and the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Trading hours and 6-hour closure period

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

Minimum procedural requirements

12. Sections 40 of the Act prescribes the minimum procedural requirements for a liquor licence to be validly made to the Authority.

Removal of liquor licence

13. Section 59 of the Act provides the minimum legal requirements regarding the removal of a licence to another premises.
14. Pursuant to section 59(3) of the Act, when determining an application for approval to remove a licence to other premises, the Authority is to deal with and determine the application as if it were an application for the granting of a licence in respect of those other premises. The Authority has the same powers in relation to the Application as the Authority has in relation to an application for a new licence.

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

15. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
 - (a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - (b) practices will be in place to ensure the responsible service of alcohol, and to prevent intoxication on the premises, and
 - (c) the applicable development consent required for use of the premises for the business to which the proposed licence relates is in force.

Community impact statement

16. Section 48 of the Act requires certain applications, including an application for the removal of a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
17. Section 48(5) provides that the Authority may only grant a licence, authorisation or approval to which section 48 applies if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter the Authority becomes aware of during the application process.

Provisions specific to a packaged liquor licence

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

19. Section 29 concerns the time period and manner during which liquor is to be sold or supplied.
20. Section 30 requires a separate liquor sales area to be set up on the licensed premises if the primary purpose of the business is *not* to sell liquor for consumption away from the premises.
21. Section 31 provides certain restrictions with respect to the grant of packaged liquor licences to general stores, service stations and take-away food shops.

Key findings

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

Validity, procedural and trading requirements

23. The Authority finds that:
 - (a) The Application has been validly made and meets the minimum procedural requirements under sections 40 and 59 of the Act. This finding is made on the basis of the Application and CIS material before the Authority and the Certificate of Advertising signed by Mr Grant Cusack (solicitor for the Applicant) dated 7 July 2017.
 - (b) The proposed trading hours for the Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods. This finding is made on the basis of the Application and CIS material provided by the Applicant.
 - (c) Liquor will be sold and supplied in a separate liquor sales area at the Premises, and in accordance with the authorisation conferred by a packaged liquor licence as required by sections 29 and 30 of the Act. This finding is made on the basis of the Application, CIS material and the plan/diagram of the Proposed Premises provided by the Applicant.
 - (d) Section 31 of the Act does not apply to the Application, as the Premises is not intended to be used for any of the purposes specified in the section.

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

24. Pursuant to section 45 of the Act, the Authority is satisfied that:
 - (a) for the purposes of section 45(3)(a), the Applicant is a fit and proper person to carry on the proposed business or activity to which the licence relates, on the basis that no issues of concern were raised regarding the probity of the Applicant company following consultation with law enforcement agencies including NSW Police ("Police") and LGNSW,
 - (b) for the purposes of section 45(3)(b), practices will be in place from the commencement of licensed trading at the Proposed Premises to ensure the responsible serving of alcohol and prevent intoxication, having regard to the Applicant's undated Plan of Management which is titled Management Policies and Strategies and the Applicant's undated House Policy, and

- (c) for the purposes of section 45(3)(c) the requisite development consent for use of the Proposed Premises as a packaged liquor licensed business is in force, on the basis of Complying Development Certificate (“CDC”) number 17/0031/01 issued by Steve Watson and Partners on 17 February 2017. The Authority notes that an issue arose during consideration of the Application as it was initially framed with respect to the proposed hours of operation on public holidays. However, this was resolved on the basis of the Applicant’s letter dated 12 September 2017 consenting to licensed trading hours with respect to public holidays that fall within the permitted hours of use as specified by the CDC.

Community Impact Statement

25. The Authority has taken into account the CIS and other available information in making the findings below about the social impact of the Premises on the local and broader communities.
26. For the purposes of this decision and consistent with its position in *Guideline 6* and longstanding practice, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Maitland, and the “broader community” comprises the relevant local government area, which at the time of this decision is Maitland City Council (“Maitland LGA”).
27. While the Maitland City Council (“Council”) was subject to a recent proposal to amalgamate with Dungog Shire, at the time of publishing this decision the Government has indicated that the proposed amalgamation will not proceed.

Positive social impacts

28. The Authority is satisfied, on the basis of the Application, CIS and additional material provided by the Applicant that granting the licence will provide some reasonable public benefit by way of increased convenience to those members of the local and broader communities who wish to engage in “one-stop” shopping by purchasing packaged liquor products whilst grocery shopping at this ALDI supermarket in Maitland.
29. The Authority accepts the information provided in the CIS that the Applicant has distributed a notice of the Application to stakeholders and neighbouring premises with no objections received from members of the community, local stakeholders, law enforcement agencies including Police and Council. On this basis, the Authority is satisfied that granting the licence will be consistent with the “expectations, needs and aspirations of the community” in respect of the local and broader community, being an object of section 3(1)(a) of the Act.
30. The Authority is also satisfied a packaged liquor licence operating within an ALDI supermarket would diversify the range of options available to the local community for those seeking to purchase packaged liquor, particularly ALDI branded products. In this sense the Authority is satisfied that the proposed new business 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.
31. Other purported positive community benefits posited by the Applicant include community “need” for the new licence, a reduction in escaped expenditure from

customers shopping locally for liquor, increasing customers at the local shopping centre, a reduction in traffic, an increase in public safety, an increase in employment, economic spin-offs and contributing to initiatives to moderate the drinking culture, are not as well defined and are not supported by persuasive evidence or analysis. On the limited supporting evidence and material before the Authority as to the nature and extent of those benefits, these contentions have been given little weight.

Negative social impacts

32. Having reviewed all of the material before it, the Authority considers that over time there is a risk that liquor sold from this licensed business will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse packaged liquor.
33. The Authority notes that the Application seeks the removal of an existing licence from Elgin Street, Maitland to 405 High Street, Maitland to operate within an ALDI supermarket situated within the Hunter Mall Shopping Centre. The Authority notes, that in the additional information document attached to the CIS, the Applicant's contention that the proposal is to remove the liquor licence as part of the relocation of the ALDI supermarket, the licensed area will be located wholly within the ALDI Supermarket and that the licensed area of the Proposed Premises will operate in "substantially the same manner" as advised at the time of the grant of the licence.
34. Both premises are located within the same State suburb of Maitland, meaning that granting the Application will not give rise to any increase in packaged liquor licence density in both the local and broader communities in question.
35. The Authority acknowledges that the trading hours are reasonably extensive, although the 8:30pm closing time Monday through Wednesday and Friday, the 9:00pm closing time on Thursday and the 8:00pm closing time on Saturday, Sunday and Public Holidays provide some degree of constraint on the capacity of liquor sold from this business to contribute to alcohol related impacts on traditionally higher risk weekend evenings.
36. The scale of the proposed licensed area, when comparing the Current Premises and Proposed Premises is a mitigating factor. The Authority is satisfied that the licensed area at the Proposed Premises will be of comparable scale to the Current Premises. The additional information document attached to the CIS and the plan/diagram of the Proposed Premises indicates that the new licensed area will be 36 square metres. While the Applicant did not specify the scale of the current premises, the Applicant has indicated that it was also "less than" 45 square metres. The Authority accepts that both premises are relatively small.
37. The Authority is further satisfied, on the basis of the CIS and plan/diagram of the Proposed Premises, that the licensed area will be adequately separated from the rest of the supermarket and will be easily monitored.
38. The Authority finds some cause for concern arising from prevailing licence density in the local and broader communities. Licensed premises information sourced from LGNSW on 19 June 2017 and ABS 2016 Census *QuickStats* data indicates that the

local community of Maitland has a rate of packaged liquor licences per 100,000 persons (106.1 per 100,000 persons) that is well above the rate for NSW as a whole (33.1 per 100,000 persons). However, the rate for the broader community of Maitland LGA (34.92 per 100,000 persons) is close to the NSW rate.

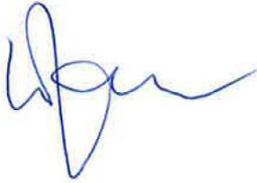
39. The Authority notes that caution should be exercised when considering the density rate per 100,000 persons for the suburb of Maitland as this data is likely to be skewed due to its small population (1,885 persons). The suburb of Maitland has only 2 packaged liquor licences (one of them being the subject of this Application) while Maitland LGA has 27 packaged liquor licences). Nevertheless, granting this licence will not result in any increase in licence density as one of the two existing licences in Maitland is being removed.
40. BOCSAR crime data for the year to March 2017 indicates that the local community of Maitland recorded substantially higher rates per 100,000 persons of population than the state of New South Wales for incidents of *alcohol related domestic assault* (304.9 compared to the New South Wales rate of 114.7), *alcohol related non-domestic assault* (740.4 compared to the New South Wales rate of 133.9) and *malicious damage to property* (5008.7 compared to the New South Wales rate of 816.4).
41. This data also indicates that the broader community had a higher than State average rate per 100,000 persons for incidents of *alcohol related domestic assault* (144.9 compared to the New South Wales rate of 114.7) and *malicious damage to property* (1086.1 compared to the New South Wales rate of 816.4) but a lower rate of *alcohol related non-domestic assault* (111.0 compared to the New South Wales rate of 133.9).
42. Notably, the Proposed Premises is not located within any hotspots for alcohol related assault, domestic assault and non-domestic assault, however it is within a high-density hotspot for incidents of malicious damage to property. The Authority is satisfied on the basis of the BOCSAR Crime Maps from April 2016 to March 2017 that there is some concentration of crime within the local community of Maitland given the high-density hotspots for alcohol related assault and domestic assault which are in close proximity.
43. The Authority has exercised some caution with respect to crime data for the *local community* by reason of the small population of Maitland, which has the potential to skew the rates with only minor variations in the incidence of crime.
44. The Authority further notes that both Police and Council were consulted on the Application and that neither Police (who did not make any submissions) nor Council (who did respond to the Applicant's solicitor via an email dated 12 September 2017) have raised any concerns or objections to the proposed relocation of the licence.
45. The ABS Socio-Economic Indexes For Areas ("SEIFA") data sourced from the 2011 Census for the suburb of Maitland and the Maitland LGA on the Index of Relative Socio-economic Advantage and Disadvantage provides a mixed picture.
46. Maitland LGA ranked in the 7th decile (with the 10th decile being the most advantaged) compared to other local government areas in NSW and the suburb of Maitland ranked in the 2nd decile compared to other suburbs in New South Wales. This data establishes that to some extent, socio economic disadvantage is a factor of concern when

assessing the vulnerability of the local community of Maitland to adverse alcohol related social impacts.

47. The Authority also notes the NSW Department of Health, *Health Stats* data on *alcohol attributable deaths and hospitalisations* for the Maitland LGA which indicates a higher smoothed standardised mortality ratio of **115.30** and a lower smoothed standardised separation ratio of **84.30** compared to a NSW average of **100**. This data provides some cause for concern in relation to alcohol attributable deaths in the broader community, which is a further adverse factor that has been taken into account when assessing the overall social impact of granting this licence removal. The Authority notes the Applicant's advice that NSW Health was consulted on the Application and did not make any submissions or raise any concerns or objections to the proposed relocation of the licence.
48. In conclusion, although the prevailing crime, health and socio demographic data is of concern when assessing overall social impact, this Application involves the removal of an existing licence of similar scale within the same suburb. The crime, health and socio demographic data does not suggest that relocation to the Proposed Premises will present any significant increase in risk associated with those factors by comparison to the Current Premises.
49. The Authority has taken into account harm reduction measures proposed by the Applicant as mitigating factors, including ALDI's "no refrigeration" condition, which may work to reduce adverse social impacts arising from any impulse consumption of liquor by persons in nearby public places, or "pre-fuelling" by young adults *en route* to licensed premises elsewhere in the local or broader community.
50. The Authority is further satisfied on the Applicant's "House Policy" and "Management Policies and Strategies" policy documents that the Applicant has implemented comprehensive and well-developed harm minimisation measures. These business planning 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. Notably, the Applicant's planning measures will become enforceable through the operation of a condition imposed upon the licence, escalating the responsibility of the licensee to comply with those standards of conduct.

Overall social impact

51. Having considered the positive and negative impacts that 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 the removal of the packaged liquor licence would not be detrimental to the well-being of the local and broader communities.
52. The Application is granted pursuant to section 59 of the Act.



Philip Crawford
Chairperson

Important Information:

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

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

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

Schedule

Material before the Authority

1. ABS SEIFA data sourced from the 2011 Census for the suburb of Maitland and the Maitland LGA.
2. NSW Department of Health, *Health Stats* data obtained by licensing staff on *alcohol attributable deaths and hospitalisations* for the Maitland LGA for 2013.
3. NSW BOCSAR Crime Statistics for April 2015 to March 2017 for the State suburb of Maitland, Maitland LGA and the State of New South Wales as a whole.
4. BOCSAR Crime Maps based upon data from April 2016 to March 2017 detailing hotspots for the concentration of offences in the suburb of Maitland.
5. Email from Aboriginal Affairs to the Applicant's solicitor dated 23 December 2016 advising no objection to the Application on the basis that the New South Wales Aboriginal Land Council and the Local Aboriginal Land Council have been notified of the proposal.
6. Application form lodged on 22 February 2017 accompanied by the Australian Securities and Investments Commission ("ASIC") Current Organisation extract for the Applicant company ALDI Foods Pty Limited as at 17 January 2017.
7. Category B CIS form lodged with the Application on 22 February 2017 accompanied by a map depicting the notification zone of neighbouring premises, and an additional information document regarding the 6-hour closure period.
8. Licensed density data provided by licensing staff calculated on the basis of LGNSW licensed premises information as at 19 June 2017 and 2016 ABS *Quickstats* population data for Maitland LGA, the State suburb of Maitland and the State of New South Wales.
9. LGNSW records listing all packaged liquor licensed premises in the Maitland LGA and the State suburb of Maitland sourced by licensing staff on 19 June 2017.
10. Google geographical maps depicting the location of the Proposed Premises, sourced by licensing staff dated 7 July 2017.
11. Submission Letter from the Applicant via Hatzis Cusack Lawyers, to licensing staff dated 10 July 2017. In this 11-page submission the Applicant discusses the background to the Application, the proposal by ALDI, conditions consented to by the Applicant, responds to the issues raised by licensing staff in assessing the Application including the Applicant's reasoning for not consenting to a proposed CCTV condition. The document is accompanied by a Certificate of Advertising signed by the Applicant's solicitor Mr Grant Cusack dated 7 July 2017.
12. Submission Letter from the Applicant via Hatzis Cusack to licensing staff dated 12 September 2017. In this 3-page letter the Applicant consents to the trading hours proposed by the Authority and responds to an email from licensing staff dated 6 September 2017 on the issue of whether the trading hours are in accordance with the CDC. The following documents are attached:

- (a) A letter from Hatzis Cusack to Council dated 10 September 2017 seeking Council confirmation of trading hours, enclosing:
- A copy of the email from licensing staff to the Applicant's solicitor, Hatzis Cusack Lawyers, dated 6 September 2017 regarding the trading hours.
 - CDC 17/0031/01 issued by Steve Watson and Partners on 17 February 2017.
 - Letter from Council dated 1 November 1984 attaching a copy of the Notice of Determination of a Development Application 103/5/174/84 issued by Council on 31 October 1984 and Notice of Determination of a Development Application 103/5/25/85 issued by Council on 29 May 1985.
- (b) Email from Council to Hatzis Cusack dated 12 September 2017 advising that Council supports the position outlined by the Applicant in their letter to Council dated 10 September 2017 in respect of the CDC and raises no objection to the hours being suggested by the Authority.
13. Plan/diagram of the Proposed Premises (provided by the Applicant) highlighting the licensed area in yellow.
14. ALDI Liquor NSW documents including the *Management Policies and Strategies* (undated) and the *House Policy* (undated) provided by the Applicant.