



Mr Grant Cusack
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Dear Mr Cusack

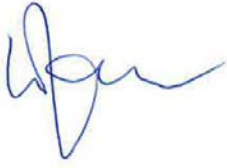
APPLICATION NO: APP-0003169018
APPLICATION FOR: Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Wednesday 8:30am – 7:00pm
Thursday 8:30am – 8:00pm
Friday – Saturday 8:30am – 7:00pm
Sunday 10:00am – 7:00pm
APPLICANT: ALDI FOODS PTY LIMITED
PROPOSED LICENCE NAME: ALDI Gunnedah
PROPOSED LICENSED PREMISES: 185-195 Conadilly Street
GUNNEDAH NSW 2380
ISSUE: Whether to grant or refuse an application for
a packaged liquor licence
LEGISLATION: Sections 3, 29, 30, 40, 45 and 48 of the
Liquor Act 2007

**INDEPENDENT LIQUOR & GAMING AUTHORITY DECISION
APPLICATION FOR A PACKAGED LIQUOR LICENCE – ALDI GUNNEDAH**

The Independent Liquor & Gaming Authority considered application number APP-0003169018 at its meeting on 14 March 2018 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **refuse** the Application.

If you have any enquiries about this letter, please contact the case manager via email to andrew.whitehead@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 27 July 2017, ALDI Foods Pty Limited (“the Applicant”) lodged an application for a packaged liquor licence for premises located at 185-195 Conadilly Street, GUNNEDAH NSW 2380 (“the Application”) with Liquor & Gaming NSW (“L&GNSW”) for determination by the Independent Liquor & Gaming Authority (“the Authority”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority decided to refuse the Application.
3. In making this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 29, 30, 31, 40, 45 and 48 of the Act, and the relevant provisions of the *Liquor Regulation 2008* (“the Regulation”).

MATERIAL CONSIDERED BY THE AUTHORITY

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with the Authority’s Guideline 6, the Authority has also had regard to relevant L&GNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by L&GNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule, with a summary where appropriate.

LEGISLATIVE FRAMEWORK

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

Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations and needs of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise alcohol-related harm, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Trading hours

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

Minimum procedural requirements

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

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

13. 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 proposed business,
 - (b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - (c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

14. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter brought to its attention.

Provisions specific to packaged liquor licence

16. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
17. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
18. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.
19. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

KEY FINDINGS

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

Validity, procedural and trading requirements

21. The Authority is satisfied that:
 - (a) the Application has been validly made and meets the procedural requirements under section 40 of the Act,
 - (b) the proposed trading hours for the Proposed Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods,

- (c) if the Application were to be granted, liquor would be sold and supplied in a separate liquor sales area at the Proposed Premises, and in accordance with the authorisation conferred by a packaged liquor licence, as required by sections 29 and 30 of the Act, and
- (d) section 31 of the Act does not apply to the Application, as the Proposed Premises is not intended to be used for any of the purposes specified in the section.

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

22. Pursuant to section 45 of the Act, the Authority is also satisfied that:

- (a) the Applicant is a fit and proper person to carry on the proposed business, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- (b) if the Application were to be granted, practices would be in place from the commencement of licensed trading at the Proposed Premises to ensure the responsible service of alcohol, having regard to the Applicant's Management Policies and Strategies and House Policy documents and the conditions to be imposed on the licence, and
- (c) the requisite development consent is in force, based on the Notice of Determination of Development Application No. 2014/036 issued by Gunnedah Shire Council on 29 May 2014, Complying Development Certificate No. 13/1579/01 issued by Steve Watson & Partners on 12 November 2013, and Amended Complying Development Certificate No. 13/1579/01A issued by Steve Watson & Partners on 30 May 2014.

Community impact statement

23. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Proposed Premises on the local and broader communities.

24. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Gunnedah, and the relevant "broader community" comprises Gunnedah Local Government Area ("the LGA").

Positive social impacts

- 25. The Authority accepts that Gunnedah is a regional centre and agricultural hub, which attracts tourists and services the consumer and other needs of persons residing throughout Gunnedah LGA and more remote outlying localities, as well as those who live in the township of Gunnedah.
- 26. The Authority accepts, based on the information available, the Applicant's contention that there are plans in place to promote population growth, and that some population growth is likely to occur in Gunnedah in the coming years. The Authority also accepts that the anticipated population growth will create further demand for packaged liquor.
- 27. The Authority accepts the Applicant's claim that the granting of the licence would provide an additional measure of convenience to customers of the ALDI Supermarket who wish to purchase liquor items along with their grocery items. This additional expediency can only be considered a modest benefit however, given that residents of Gunnedah can already access grocery and liquor products together at the existing Woolworths supermarket, which is housed in the same building as an associated BWS – Beer Wine Spirits packaged liquor facility, and the existing Coles supermarket, which is located within the same small

shopping centre as The Bottle-O packaged liquor facility (notwithstanding the fact that the purchase of packaged liquor at these facilities requires a further transaction in addition to the purchase of groceries).

28. The benefit of increased convenience is further reduced on the basis of the small size of the Proposed Premises. A smaller packaged liquor facility is less likely to carry a comprehensive range of liquor products, meaning that customers of the ALDI Supermarket might still prefer to shop at any one of the number of other, larger packaged liquor facilities located in Gunnedah.
29. The Authority accepts that the provision of a large carpark at the rear of the Proposed Premises enhances the convenience offered by the Applicant.
30. The Authority accepts the Applicant's submission that the Proposed Premises would sell a range of principally ALDI-branded liquor products which are not currently available elsewhere in Gunnedah (with the nearest licensed ALDI supermarket being located in Tamworth), however notes that the range of additional products to be offered is limited.
31. The Authority accepts that there is a significant degree of support for the proposal amongst customers of the existing ALDI Supermarket, as evidenced by the many signatures gathered and pro forma letters provided in support of the Application.
32. The Authority accepts that no objections were received from any of the legislated stakeholder organisations. In particular, the Authority notes that NSW Police does not object to the Application being granted, however requests that a number of conditions be imposed on the licence.

Negative social impacts

33. The Authority notes the concerns raised in the submission received from a local business owner, whose property shares a boundary with the ALDI Supermarket. In her submission, she anticipates customers of the Proposed Premises consuming alcohol in the car park and engaging in "bad behaviour" in conjunction with that consumption. The Authority accepts the Applicant's assurance that no ALDI-owned stores have experienced any such problems in their associated carparks, and that CCTV surveillance will be in place to monitor the carpark.
34. The Authority notes from the BOCSAR data that, for the year ending September 2017, there are low and medium density hotspots for alcohol-related assault, and low, medium and high density hotspots for domestic assault, non-domestic assault and malicious damage to property in the vicinity of the Proposed Premises.
35. In conjunction with the above, the Authority is troubled by the high rates of alcohol-related domestic assault, alcohol-related non-domestic assault and malicious damage to property for both Gunnedah suburb and LGA for the same period, all of which were well above corresponding NSW figures, indicating that a significant degree of alcohol-related harm is currently being experienced within the local and broader communities. The Authority notes that the rates of alcohol-related domestic and non-domestic assault for both the suburb and LGA increased from 2016 to 2017.
36. The Authority accepts that both the local and broader communities have higher than average rates per 100,000 of population of packaged liquor licences. The Authority is not persuaded by the Applicant's suggestion that one of the existing packaged liquor licences in the area should not be included in density calculations due to being a restricted operation, as the same limitations also exist in respect of an unknown number of the many packaged liquor licences located across NSW, and are not accounted for in the calculation of the density of packaged liquor licences per 100,000 of the state's population.

37. The Authority notes that, although Transport Roads & Maritime Services stopped short of objecting to the Application, it did provide a submission in which objective data was extracted to demonstrate that, on average during the period October 2011-September 2016, 9.1% of casualty crashes in the Gunnedah LGA were alcohol-related. The Authority is troubled by these figures, which are higher than the Northern Region's average of 7.8% and more than double the State average of 4.3%.
38. The Authority accepts that data provided by NSW Health indicates that residents of Gunnedah LGA are dying from alcohol-related health issues at a higher than average rate (with a smoothed standardised mortality ratio of 122.90 for the most recently captured period), however are being hospitalised at a lower than average rate (with a smoothed standardised separation ratio of 66.60).
39. The Authority has had regard to the ABS data indicating that, as at 2011, both Gunnedah suburb and LGA were relatively disadvantaged in comparison with other suburbs and LGAs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage, with each ranking in the 3rd decile.
40. The Authority notes the extensive submission provided by the Applicant in response to the objections received by L&GNSW, which includes evidence of substantial local support for the Application and observations made by an independent consultant that there was no visible evidence, during his limited period of on-site observation, of any existing alcohol-related disturbances being experienced in the vicinity of the Proposed Premises, and that Gunnedah is a tidy and well-maintained locality. The consultant, Mr Paroz, also referenced the active local liquor accord, proactive measures recently introduced by Gunnedah Shire Council's Crime Prevention Working Group, and the lighting and CCTV coverage featured in and around the ALDI Supermarket, including the carpark, as further evidence that the granting of the Application would give rise to "little to no-risk of crime or anti-social behaviour".
41. Whilst the Authority accepts that these were the consultants findings during the one evening and one morning he spent in the area, on balance, it remains concerned by what is revealed by the objective data in respect of rates of relevant offences, alcohol-related deaths and alcohol-related casualty crashes in the local and broader communities.
42. Additionally, the Authority is of the view that the local and broader communities are already well-served by numerous existing packaged liquor facilities, meaning that the benefit of an additional such facility is reduced.
43. The Authority also notes the report from Mr Duane, an economic and planning consultant, which was attached to the Applicant's final submission. The Authority accepts that the Applicant and its consultant are well placed to estimate how much revenue an ALDI liquor business in a rural location of this profile is likely to receive, given that the Applicant operates many liquor businesses in regional towns across the state. What is not clear is the methodology underpinning Mr Duane's projection that the arrival of a new competitive liquor business (with all the distribution and marketing power of a major supermarket chain) will make no difference to prices, liquor consumption patterns or overall volume of alcohol consumed at the local or broader community level. This is particularly curious when the Applicant is advancing the proposition that it will contribute to competition as a positive community benefit.
44. Notwithstanding Mr Duane's findings, the Authority considers it likely that any liquor that were to be sold or supplied at the Proposed Premises would contribute to the prevailing concerning levels of alcohol-related harm in the local community.
45. The Authority is not satisfied that this risk would be adequately mitigated by the imposition of special licence conditions or by the Applicant's adherence to the "Management Policies and Strategies" and "House Policy" documents lodged with the Application.

Overall social impact

46. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is not satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.
47. Furthermore, the Authority is not satisfied that a decision to grant the licence would be consistent with the objects of the Act to regulate the supply of liquor and facilitate the responsible development of the liquor industry in line with community expectations and needs.
48. Accordingly, the Authority has decided to refuse the Application.



Philip Crawford
Chairperson

Important Information:

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

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

1. ABS SEIFA data based on the 2011 Census for Gunnedah suburb and Gunnedah LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol-attributable deaths in the LGA for the period 2012-13 and alcohol-attributable hospitalisations in the LGA for the period 2013-15.
3. Complying Development Certificate No. 13/1579/01 issued by Steve Watson & Partners on 12 November 2013.
4. Notice of Determination of Development Application No. 2014/036 issued by Gunnedah Shire Council on 29 May 2014.
5. Amended Complying Development Certificate No. 13/1579/01A issued by Steve Watson & Partners on 30 May 2014.
6. NSW Recorded Crime Statistics 2016 outlining the proportion of offences in the LGA by offence type, day of week and time of day.
7. Submission from a local business owner on 27 April 2017 in relation to the Application.
8. Floor plan dated 9 May 2017 indicating the proposed liquor sales area within the Premises.
9. ASIC business records in relation to the Applicant, extracted 12 May 2017.
10. Submission from Aboriginal Affairs on 12 May 2017 in relation to the Application.
11. Submission from Transport Roads & Maritime Services on 22 May 2017 in relation to the Application.
12. Completed Category B Community Impact Statement dated 13 July 2017.
13. Completed application dated 27 July 2017.
14. Management Policies and Strategies and House Policy documents submitted along with the application on 27 July 2017.
15. Submission from a local business owner on 27 July 2017 in relation to the Application.
16. Submission from NSW Police on 30 August 2017 in relation to the Application.
17. Certifications of Advertising signed and dated 13 and 15 February 2018.
18. BOCSAR crime maps for the year to September 2017, indicating the location of the Premises relative to hotspots for alcohol-related assault, domestic assault, non-domestic assault, and malicious damage to property.
19. NSW crime statistics for the two years to September 2017, published by BOCSAR, showing the counts, rates and two year trends of alcohol-related assault (domestic and non-domestic) and malicious damage to property in Gunnedah suburb and Gunnedah LGA.
20. 104 pro forma submissions from members of the public dated 14 November 2017 in relation to the Application.
21. Google map images extracted from the Google website on 18 February 2018, showing the location and photos of the Premises in map view, earth view and street view.

22. L&GNSW liquor licensing records as at 18 February 2018, outlining the density of all types of liquor licences in Gunnedah suburb, Gunnedah LGA and NSW, and listing all packaged liquor licences in the suburb and LGA.
23. Submission from the Applicant's legal representative in response to the assessment of the Application, attaching reports by Gavin Duane of Location IQ and Patrick Paroz, dated 19 February 2018.
24. A petition in support of the Application, featuring more than 825 signatures.
25. An undated submission from a member of the public in relation to the Application.