



Mr Grant Cusack
Hatzis Cusack Lawyers

gc@hatziscusack.com.au

2 August 2017

Dear Mr Cusack

APPLICATION NO: APP-0002653283
APPLICATION FOR: 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 LICENCE NAME: ALDI Mosman

PROPOSED LICENSED PREMISES: Shop 17, Bridgepoint Shopping Centre
1 - 3 Brady Street
MOSMAN NSW 2088

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 MOSMAN**

The Independent Liquor & Gaming Authority considered application number APP-0002653283 at its meeting on 19 July 2017 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 charles.rivers@justice.nsw.gov.au.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', with a stylized, cursive script.

Philip Crawford

Chairperson

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

STATEMENT OF REASONS

DECISION

1. On 7 February 2017 the Applicant lodged an application for a packaged liquor licence (“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 of the Act 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 (“DC”) 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 Plan of Management ("POM") and the conditions to be imposed on the licence, and
- (c) the requisite DC is in force, based on Complying Development Certificate No. 16/3392/01 issued by Steve Watson & Partners on 17 January 2017.

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 Mosman, and the relevant "broader community" comprises Mosman Local Government Area ("the LGA").

Positive social impacts

25. The Authority accepts, based on the information available, the Applicant's contention that some population growth is proposed for Mosman in the coming years. The Authority also accepts that the anticipated population growth will create further demand for packaged liquor.
26. 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 in these circumstances however, given the proximity of numerous existing packaged liquor facilities to the ALDI Supermarket, including the Chambers Cellars store also located in the Bridgepoint Shopping Centre.
27. The benefit of increased convenience is further reduced on the basis of the small size of the Proposed Premises. A smaller packaged liquor facility is less likely to carry a comprehensive range of liquor products, meaning that customers of the ALDI Supermarket might still prefer to shop at any one of the number of packaged liquor facilities located in Mosman.
28. 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 Mosman, however notes that the range of additional products to be offered is limited.
29. The Authority acknowledges that NSW Police do not object to the proposal. The position of NSW Police is supported by evidence from BOCSAR to indicate that rates of relevant

alcohol-related offences for the year ending December 2016 are lower than corresponding NSW rates.

30. Whilst the Authority accepts the results of the 2015 ALDI customer survey that suggests that the majority of the ALDI customers surveyed expect ALDI to sell liquor, and that just over half indicated that they would be inconvenienced if ALDI were not to sell liquor, the customers surveyed shopped at 20 ALDI store locations currently selling liquor across NSW and there is no local evidence to suggest that the prospective customers of ALDI Mosman share the same expectations and outlook on convenience.
31. The Authority has had regard to the ABS data indicating that, as at 2011, Mosman was extremely advantaged in comparison with other suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage, ranking in the 10th decile.

Negative social impacts

32. The Authority notes that there is little evidence of any significant degree of support for the proposal amongst members of the local or broader communities. The only indication of any such support is the fact that only one member of the public provided a submission in opposition to the Application.
33. 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 existing packaged liquor licences in Mosman include Dan Murphy's, located just over 200 metres from the Proposed Premises, and the Chambers Cellars store located in the same shopping centre as ALDI Mosman, amongst others.
34. The Authority notes from the BOCSAR data that, whilst Mosman suburb and LGA's rates of alcohol-related domestic assault are lower than the NSW rate for the year ending March 2016, the Proposed Premises is located within a medium density hotspot for domestic assault, and there is a further high density hotspot nearby.
35. The Authority is also troubled by the very high rate of alcohol-attributable hospitalisations in the LGA over the past 10 years, which indicates that a considerable number of residents of the local and broader communities are already experiencing alcohol-related illnesses and injuries, and have been over the last decade.
36. Furthermore, the Authority accepts the evidence provided by Northern Sydney Local Health District that there are several public housing residences located in close proximity to the Proposed Premises, the occupiers of which are likely to be particularly susceptible to spending a larger proportion of total household income on alcohol.
37. The Authority acknowledges that it is likely that any liquor that were to be sold or supplied at the Proposed Premises would contribute to the prevailing concerning levels of alcohol-related adverse health impacts in the local community.
38. The Authority is not satisfied that the risks outlined above 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

39. 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.
40. 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.

41. 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 indicating that Mosman suburb ranked in the 10th decile compared to other suburbs in NSW, and Mosman LGA ranked in the 10th decile compared to other local government areas in NSW, on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data relating to alcohol attributable deaths by local government area, Mosman LGA, NSW 2001-2002 to 2012-2013, indicating that the Smoothed Estimate of Standardised Mortality Ratio was 77.70 for the period 2012-2013.
3. HealthStats NSW data relating to alcohol attributable hospitalisations by local government area, Mosman LGA, NSW 2001-2003 to 2013-2015 indicating that the Smoothed Estimate of Standardised Separation Ratio was 134.60 for the period 2013-2015.
4. Complying Development Certificate No. 4206/1 approving internal alterations to existing commercial premises, certified by Certis Building Certification on 15 November 2016.
5. BOCSAR Crime Maps for the year ending December 2016 detailing hotspots for the concentration of offences in the vicinity of the location, indicating that:
 - the Proposed Premises is located within a low density hotspot for alcohol-related assault, a medium density hotspot for domestic assault and a high density hotspot for malicious damage to property; and
 - there is a high density hotspot for domestic assault in Mosman suburb.
6. NSW crime statistics for the year ending December 2016, published by BOCSAR. This data indicates that:
 - (a) the rate of *alcohol-related domestic assault* incidents recorded by NSW Police for Mosman suburb and LGA was **42.9** per 100,000 persons, well below the State-wide rate of **116.9** per 100,000 persons.
 - (b) the rate of *alcohol-related non-domestic assault* incidents recorded by NSW Police for Mosman suburb and LGA was **26.4** per 100,000 persons, well below the State-wide rate of **136.5** per 100,000 persons; and
 - (c) the rate of *malicious damage to property* incidents recorded by NSW Police for Mosman suburb and LGA was **432.7** per 100,000 persons, well below the State-wide rate of **834.0** per 100,000 persons.
7. A letter to the Applicant from Transport RMS dated 21 December 2016, making a number of recommendations.
8. 2011 Census Quickstats for Mosman suburb and Mosman LGA, as at 6 January 2017.

9. A letter to the Applicant from the Department of Family & Community Services NSW dated 13 January 2017, advising that the Department does not intend to provide any input into the CIS.
10. Complying Development Certificate No. 16/3392/01 approving the internal fitout to retail tenancy for use as ALDI, determined by Steve Watson & Partners on 17 January 2017.
11. ASIC Current Organisation Extracts for ALDI FOODS PTY LTD ACN 086 210 139, ALDI PTY LTD ACN 086 493 950, dated 17 January 2017, and WINGDOM PTY LTD ACN 148 193 211, dated 24 January 2017.
12. CIS Category B dated 2 February 2017, with accompanying document titled "Additional Information – Application and Community Impact Statement", detailing the circumstances surrounding the Application, including the following:
 - the proposal is for a very small packaged liquor facility within an ALDI Supermarket;
 - Mosman houses an extremely advantaged population;
 - none of the packaged liquor licences in Mosman are associated with a supermarket;
 - the proposal offers a number of benefits to the local and broader communities including additional choice, convenience, competitive pricing and reduced escape expenditure, amongst other things; and
 - no adverse submissions were received during the CIS consultation process.
13. Application form for a packaged liquor licence, lodged 7 February 2017, accompanied by the following documents:
 - "Additional Information – 6-Hour Closure Period", seeking a 6-hour closure period of 2:00am – 8:00am on the basis that customers of the ALDI Supermarket would prefer to be able to purchase liquor items at the same time as purchasing grocery items, including between the hours of 8:00am (when the ALDI Supermarket opens for business) and 10:00am;
 - "Conditions Consented To By The Applicant Being Endorsed On The Licence", proposing the imposition of a number of conditions, including a condition restricting the Applicant from selling refrigerated liquor products;
 - "Management Policies and Strategies – ALDI Liquor – NSW"; and
 - "ALDI Liquor – NSW – House Policy".
14. Plan of the proposed licensed area lodged with the Application on 7 February 2017.
15. A submission from NSW Police emailed to L&GNSW on 22 February 2017, advising that NSW Police do not object to the granting of the Application provided that various conditions are imposed.
16. An email from L&GNSW Compliance Operations dated 27 February 2017 attaching the EVAT Assessment Report, advising that L&GNSW does not intend to carry out any further assessment of the Application..
17. A submission from Northern Sydney Local Health District ("NSLHD"), lodged on 8 March 2017, and advising as follows:

- NSLHD objects to the Application on the basis that the overall social impact will be detrimental to the well-being of the local and broader communities;
 - Mosman LGA has an oversaturation of packaged liquor licences and a markedly high rate of alcohol-attributable hospitalisations which has exceeded the NSW average over the past 10 years;
 - the Proposed Premises is located within or in the vicinity of various BOCSAR hotspots, including in respect of domestic assault;
 - the benefits to the local community, such as convenience and reduction in escape expenditure as proposed by the Applicant, are not genuine benefits, in that they already exist in the local liquor market; and
 - there are 28 social housing households within 300 metres of the Proposed Premises and 90 social housing households throughout the Mosman LGA.
18. A submission from a member of the local community, lodged on 8 March 2017, and advising as follows:
- the Applicant has failed to provide evidence to satisfy the Authority that the overall social impact of the licence will not be detrimental to the well-being of the local or broader communities;
 - the benefits to the local community such as convenience and choice of product as proposed by the Applicant are not genuine benefits, in that they already exist in the local liquor market; and
 - the Applicant has failed to identify any negative social impacts, including the vulnerability of those living in the nearby public housing estates, the alcohol-related health problems affecting residents of the local and broader communities, the location of the Proposed Premises within a domestic assault hotspot and the low price of the alcohol sold by ALDI.
19. Liquor licensing records from L&GNSW as at 2 May 2017 indicating:
- Mosman suburb had 11 packaged liquor licences, equivalent to 40.07 packaged liquor licences per 100,000 of population;
 - Mosman LGA had 12 packaged liquor licences, equivalent to 43.71 packaged liquor licences per 100,000 of population; and
 - NSW had 2,477 packaged liquor licences, equivalent to 35.8 packaged liquor licences per 100,000 of population.
20. Certifications of Advertising Application signed by Ms Elle Schippers and Mr Grant Cusack, dated 15 May 2017.
21. A letter from Grant Cusack to L&GNSW dated 16 May 2017, which included the following responses to concerns raised by submitters:
- a number of the packaged liquor licences in Mosman are not currently trading, some are restricted operations, and others are located some distance from the Proposed Premises;
 - none of Mosman's clubs or hotels offer a separate dedicated liquor store area;
 - the small size of the proposed licensed area would not materially impact on any adverse health impacts; and
 - NSW Police has not raised any concerns;

22. Google maps indicating the location of the Proposed Premises and existing packaged liquor licences in Mosman, extracted on 1 June 2017.