



Mr Grant Cusack
Hatzis Cusack Lawyers
GPO Box 3743
SYDNEY NSW 2001
gc@hatziscusack.com.au

25 May 2017

Dear Mr Cusack,

APPLICATION NO: APP-0002358101
APPLICATION FOR: Packaged liquor licence
TRADING HOURS: Consumption off premises:
Monday to Wednesday 8:30AM-8:30PM
Thursday 8:30AM-9:00PM
Friday 8:30AM-8:30PM
Saturday 8:30AM-8:00PM
Sunday 10:00AM-8:00PM

APPLICANT: ALDI Foods Pty Limited
LICENSED PREMISES NAME: ALDI Narellan

PREMISES: Cnr Queen Street & Camden Valley Way
NARELLAN, NSW 2567

ISSUE: Whether to grant or refuse a new packaged liquor licence

LEGISLATION: Sections 3, 29, 30, 31, 40, 45 and 48 of the *Liquor Act 2007*

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

The Independent Liquor and Gaming Authority considered application number APP-0002358101 for a new packaged liquor licence (Application) on 19 April 2017 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the Application subject to the following conditions:

1. 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 2:30AM and 8:30AM 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.

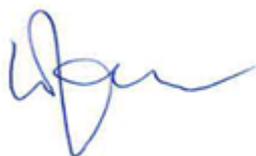
2. Retail Sales

Good Friday	Not permitted
December 24 th	Normal trading Monday to Saturday, 8:00AM to 10:00PM Sunday
Christmas Day	Not permitted
December 31 st	Normal trading

3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing 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.
4. The premises are 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 the NSW Police Force.
5. The licensee must ensure that the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.
6. The licensee will not sell refrigerated liquor products from the licensed premises.
7. The licensee or its representative must join and be an active member of the local liquor accord.

If you have any advice or enquiries about this letter, please contact the case manager via email to Santina.causa@justice.nsw.gov.au

Yours faithfully



Philip Crawford

Chairperson

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

STATEMENT OF REASONS

DECISION

1. The Independent Liquor & Gaming Authority (“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 lodged on 3 November 2016 (“the Application”) for a new packaged liquor licence, as all of those parties 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.
2. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the *Liquor Act 2007* (“the Act”) that the overall social impact of granting this licence would not be detrimental to the well-being of the local and broader communities.
3. 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) of the Act.

MATERIAL CONSIDERED BY THE AUTHORITY

4. The Authority has considered the Application, 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 maintained by Liquor & Gaming NSW (“LGNSW”), Bureau of Crime Statistics and Research (“BOCSAR”) crime data and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. The material considered while making this decision is listed and, in some cases, briefly described in the Schedule.

LEGISLATIVE FRAMEWORK

5. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the Act and the *Liquor Regulation 2008* (Regulation). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
6. 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.
7. Section 48(5) of the Act requires that the Authority must not grant a relevant 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”.

8. For the purposes of this decision and consistent with its longstanding practice and its position stated in *Authority Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Narellan.
9. Consistent with the Authority’s long standing practice to find that the broader community comprises the relevant local government area (“LGA”), the Authority is satisfied that the broader community is the community within the Camden Council LGA (Camden LGA).
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.*

KEY FINDINGS

11. The Authority is satisfied, on the basis of the Application and CIS material before it, that for the purposes of Section 40 of the Act, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
12. 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 licensed venue of the kind proposed in the Application material. The Authority notes that no probity issues were raised with regard to the Applicant following consultation with law enforcement agencies, including NSW Police (“Police”) and LGNSW.
13. 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 *ALDI Management Policies and Strategies* and *House Policy* documents, as submitted to the Authority in support of the Application.

14. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises that is the subject of the Application falls within the scope of the development consent that is currently in force with regard to the Premises. This finding is made on the basis of development application DA No.1039/2014 (“DA”) approved by Camden Council (“Council”) on 20 May 2015 and a submission from Council’s Community & Road Safety Officer dated 24 November 2016 advising that development consent for the Premises is in place.

Social Impact – Positive Benefits

15. The Authority is satisfied, on the basis of the Application, CIS and additional material provided by the Applicant, that granting this licence will provide some modest benefit by way of increased convenience and choice to those members of the local and broader community who wish to purchase ALDI liquor products at this location in Narellan.
16. The Authority accepts the information provided in the CIS that the local and broader communities are undergoing significant population growth, housing development and transport upgrades, noting the Applicant’s submission based on ABS data that the Camden Statistical Local Area has the “highest average annual population growth between 2011 and 2026 in Australia”.
17. The Authority accepts the Applicant’s contention, made by reference to ABS 2011 Census data and information sourced from *Forecast.id*, that the local and broader communities are experiencing significant development growth, with the Narellan Town Centre presently undergoing a \$200 million redevelopment. Granting the Application will likely service that growth in demand and development.
18. Noting that the Authority does not have before it any adverse submissions from the local or broader community, the Authority is satisfied that some measure of increased convenience through “one stop” shopping is consistent with the “expectations, needs and aspirations of the community” in respect of the local and broader communities, advancing the statutory object of section 3(1)(a) of the Act.
19. Furthermore, to the extent that granting the Application will also enable ALDI shoppers in the local community to purchase *ALDI branded* liquor products, the Authority is satisfied that granting the Application will contribute (albeit to a modest extent) to the balanced development of the liquor industry serving the local community for the purposes of section 3(1)(b) of the Act.
20. While the extent of any increase in convenience and choice is reduced by the 3 existing packaged liquor licences in Narellan and 17 packaged liquor licences elsewhere in the Camden LGA, some moderate benefits have been established for the local community on the information provided in the CIS.
21. The Applicant further contends that there will be further positive community benefits by way of competitive pricing, reduction of escape expenditure, reduction in traffic, increase in employment of local residents, economic spin-offs and

contributing to initiatives to moderate “the drinking culture”. However, given the complex economic and social nature of these claims, the Authority is unable to give significant weight to these submissions when the Applicant has provided little by way of supporting evidence or analysis to substantiate them.

Social Impact – Negative Impacts

22. Having reviewed all of the material before it, the Authority considers that over time there is a risk that liquor sold from this new 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.
23. The Applicant requests that the Premises be licensed from 8:30AM-8:30PM on Mondays through Wednesdays and Fridays, 8:30AM-9:00PM on Thursdays, 8:30AM-8:00PM on Saturdays and from 10:00AM-8:00PM on Sundays. These hours are reasonably extensive across the course of the week, albeit with some moderation on weekend evenings which BOCSAR crime data for NSW typically disclose to be higher risk times for the occurrence of alcohol related crime.
24. The Authority has had regard to licence density statistics sourced from LGNSW liquor licensing records, disclosing that the State suburb of Narellan currently has 3 packaged liquor licences while the Camden LGA has 17 packaged liquor licences.
25. Whilst LGNSW licensing information discloses that the rate of liquor licences in the suburb of Narellan is substantially above the State-wide rate per 100,000 persons, licence density is lower than State wide rates for the Camden LGA. Noting the small number (3) and location of the stand-alone packaged liquor outlets in this suburb and having regard to the population growth noted above, the Authority does not consider that the number and density of packaged liquor outlets is particularly problematic *per se*.
26. Data sourced by licensing staff for the Authority from Health NSW indicates that the Smoothed Estimate of Standard Separation Ratio (78.8) for alcohol related hospitalisation in the Camden LGA for 2012/13 was substantially below the State level (fixed at 100) while the Smoothed Estimate of Standard Mortality Ratio for alcohol related deaths during the same period was 97.2, close to the State-wide rate.
27. The Authority further notes, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data, that the Camden LGA is relatively advantaged compared to other LGAs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage , ranking in the 9th decile (with decile 10 being the most advantaged). The State suburb of Narellan ranks in the 4th decile for suburbs in NSW, indicating moderate relative disadvantage. The SEIFA data does not indicate that socio economic disadvantage is a compounding factor of concern at the level of either community as a whole.

28. The data on the prevailing exposure of the local and broader communities to alcohol related crime presents a mixed picture. Crime data sourced from BOCSAR for the period from October 2015 to September 2016 indicates that the State suburb of Narellan recorded substantially lower rates of *alcohol-related domestic assault* (75.7 per 100,000 persons of population) compared to the New South Wales rate (118.1 per 100,000 persons) while the rate for Camden LGA (95.4 per 100,000 persons) was also comfortably below the State-wide rate.
29. This is an important factor when assessing a packaged liquor licence application given that the BOCSAR Recorded Crime Statistics for NSW 2012-2016 typically disclose that the overwhelming majority of domestic violence assaults occur in private residences, where most packaged liquor is expected to be consumed.
30. Notably however, the rate of *alcohol-related non-domestic assault* for Narellan during that October 2015 to September 2016 period (353.1) is substantially above the New South Wales rate (137.9). This is an adverse factor of some concern. However, this rate is influenced by the relatively small population (3492) recorded for the suburb of Narellan in the 2011 ABS Census.
31. BOCSAR crime mapping data for the period between October 2015 and September 2016 indicate that the Premises is located either just outside or on the periphery of a low-density hotspot area for *alcohol related assault*. The Premises is located within a medium-density hotspot for the concentration of *domestic assault* incidents, and within a low-density hotspot for the concentration of *non-domestic assault* incidents.
32. However, those hotspots disclose relative concentrations of crime calculated by reference to the crime recorded for the local government area as a whole, which in respect of *alcohol related non-domestic assault* was recorded at a rate of 105.8 per 100,000 persons of population, substantially below the rate recorded for New South Wales at 137.9 per 100,000 persons..
33. The Application and CIS disclose a number of factors that will serve to reduce the scope of *this* licensed business to contribute to alcohol related impacts in the communities.
34. First, the scale of the licensed area of the proposed new business (39 square metres) is relatively small. Second, the liquor sold will principally comprise a limited range of ALDI branded products (including beer, wines and spirits) with a small selection of non-ALDI branded products or “special” sales. No more than 100 lines of liquor will be sold, a substantially smaller range than many liquor stores.
35. Third, the Applicant consents to a licence condition that the supermarket will not sell refrigerated liquor. This additional measure is likely to discourage customers from impulse consumption or consuming liquor in nearby public places.
36. Fourth, the location of the liquor business within an existing supermarket will provide an additional level of passive surveillance for the conduct of patrons.

37. Fifth, the Authority has considered the reasonably detailed measures set out in the *ALDI Management Policies and Strategies* and *House Policy* documents provided with the Application and CIS. They include detailed provisions for the management of the supply of liquor on the Premises, and security provisions including CCTV. Those provisions will be enforceable through a licence condition.
38. Finally, the Authority receives considerable comfort from the absence of any adverse submissions from that community - particularly local Police and Council.

Conclusion

39. 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. Interested parties include NSW Police, the Applicant, Council, RMS, neighbouring occupiers, NSW Health, FACS and all other parties required to be consulted under the legislation.
40. Having considered together the nature and extent of positive benefits and negative impacts that the Authority is 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.
41. The Application is granted pursuant to section 45 of the Act. 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) of the Act- 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; and (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: 19 April 2017



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 <https://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 Camden LGA and the state suburb of Narellan.
2. BOCSAR Recorded Crime Statistics for New South Wales: 2012 – 2016.
3. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for October 2014 – September 2016.
4. Publicly available BOCSAR Crime Maps based upon data from October 2015 to September 2016.
5. NSW Department of Health *Health Stats* Reports, dated 19 July 2016 for Camden LGA for 2012/2013.
6. Submission from RMS dated 1 August 2016, including road crash statistics and recommendations for the operation of the Premises.
7. Email submission from NSW Aboriginal Affairs dated 2 August 2016 advising that the agency has no objection to the Application provided that the local land council is notified of the Application.
8. Application Form for packaged liquor licence lodged on 3 November 2016.
9. CIS form, supporting material, and accompanying submission from Mr Grant Cusack filed with the Application. The supporting material includes:
 - (a) Map of Narellan showing the area covered by the Shopping Centre in which an ALDI Supermarket is located;
 - (b) Map showing the area covered by the Narellan Alcohol Free Zone;
 - (c) List of stakeholders notified of the Application;
 - (d) List of special interest groups notified of the Application.
 - (e) ASIC Current Organisation Extract for ALDI Foods Pty Limited dated 20 October 2016.
 - (f) Decision on DA number 1039/2014 issued by Council on 20 May 2015, in respect of the Premises
 - (g) Floor plans or diagram of the licensed area indicating that a scale of 39 sqm.
10. Applicant's *Management Policies and Strategies* and *House Policy* documents for the proposed packaged liquor business dated 11 November 2016.
11. Submission from LGNSW Compliance Operations dated 17 November 2016 including the results of an automated Environment and Venue Assessment Tool to the Application and advising that LGNSW does not intend to carry out any further assessment.
12. Submission from Council's Community & Road Safety Officer dated 24 November 2016 advising that development consent for the Premises is in place.

- 13.** Response from the Applicant's solicitor dated 27 February 2017 to an email from licensing staff dated 17 February 2017, consenting to conditions proposed by licensing staff and enclosing a letter to the Applicant from the NSW Department of Family and Community Services (FACS) dated 28 November 2016 advising that FACS have "no grounds for concern" with the Application.
- 14.** Certificate of Advertising Application signed by Mr Grant Cusack and dated 7 March 2017.
- 15.** Submission from Senior Constable Mario Pasalic, Camden Local Area Command of NSW Police dated 14 March 2017, advising no objection to the Application.
- 16.** LGNSW liquor licenced premises and licence density records for Narellan and Camden LGA as of 7 March 2017.
- 17.** Google Maps satellite map, road map, and street view images for the site of the Premises and surrounds, accessed by licensing staff on 7 March 2017.