



Mr Grant Cusack  
Hatzis Cusack Lawyers  
GPO Box 3743  
SYDNEY NSW 2001

[gc@hatziscusack.com.au](mailto:gc@hatziscusack.com.au)

Dear Mr Cusack

**Application for removal of a hotel licence  
ALDI Taree**

I am writing to you regarding an application made by your client ALDI Foods Pty Limited which was received by the Independent Liquor and Gaming Authority on 20 October 2014.

The Application seeks the removal of a hotel within the meaning of section 59 of the *Liquor Act 2007* from premises located at 236 Victoria Street, Taree, NSW 2430. The licence is to be relocated within a proposed ALDI store at Wynter Street and High Street, Taree, NSW 2430.

The Authority considered the Application at its meeting on 25 November 2015 and decided to *refuse* the Application pursuant to section 45 of the Act. Authority staff informally notified the Authority's decision via email dated 30 November 2015.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. This letter attaches the Authority's statement of reasons. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statement of reasons as soon as practicable.

If you have any enquiries, please contact case manager Ms Santina Causa via email at [santina.causa@ilga.nsw.gov.au](mailto:santina.causa@ilga.nsw.gov.au) .

Yours faithfully

Micheil Brodie  
**Chief Executive**

23 February 2016

## STATEMENT OF REASONS

### INTRODUCTION

1. On 20 October 2014 the Independent Liquor and Gaming Authority (Authority) received an application (Application) regarding the licensed premises located at 236 Victoria Street, Taree, NSW 2430 (Existing Premises).
2. The Application seeks the removal of a hotel licence within the meaning of section 59 of the *Liquor Act 2007* (Act) from the Existing Premises to premises located at Wynter Street and High Street, Taree, NSW 2430 (Premises).
3. The hotel licence will be used to form a department of an existing ALDI store located at the Premises.
4. The proposed licensed trading hours for the new business to operate on the Premises are:

Monday to Wednesday	8:30am to 7:00pm
Thursday	8:30am to 8:00pm
Friday	8:30am to 7:00pm
Saturday	8:30am to 7:00pm
Sunday	10:00am to 7:00pm.
5. The Application seeks that the 6-hour closure period required by section 11A of the Act be fixed at between 2:30am and 8:30am.
6. Authority staff informally notified the Authority's decision via email dated 30 November 2015. This letter serves to provide a formal record of the decision to grant the Application.
7. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. This statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

### MATERIAL BEFORE THE AUTHORITY

8. **Application Form and Community Impact Statement (CIS) dated 4 December 2014:** In the CIS document, the Applicant notes that the proposed relocation of the licence is from The Victoria Hotel, 236 Victoria Street, Taree, NSW, 2430 to ALDI Taree, Wynter and High Streets, Taree, NSW, 2430 to the proposed new Premises. The Application specifies the proposed licensed trading hours that are noted above.
9. The Application also seeks that the 6-hour daily closure period required by section 11A of the Act be set between 2:30am and 8:30am, to accommodate the 8.30am opening time proposed by the Applicant for the new business.
10. The contentions made by the Applicant in the CIS document as to the overall social impact of granting the Application are discussed in further detail below.

11. **Complying Development Certificate No. 10/0810/54 issued by Steve Watson & Partners, dated 18 April 2011 (CDC):** This document certifies the development of a "Retail (Supermarket) – including sale of liquor".
12. **Greater Taree Council Development Application 0767/2007D (DA), dated 10 August 2007.** The DA records the grant of consent for a "Shopping Centre (ALDI Store)". The DA also addresses, *inter alia*, the regulation of construction, fire safety, maintenance, and amenities but does not restrict hour of operation.
13. **Plan of the Premises.** The Applicant has provided a diagram showing the Premises and the boundaries of the proposed licenced area of the business, identified as being 32 square metres.
14. **Australian Securities and Investments Commission (ASIC) Company Extract created on 9 December 2014:** for ALDI Pty Limited and ALDI Foods Pty Limited disclosing that the directors of both companies are Mr Thomas Jason Daunt and Mr Stefan Kopp.
15. **ALDI Liquor NSW House Policy for the Responsible Service of Liquor:** this page internal business policy document states that its purpose is to "minimise the likelihood of negative impacts and ensure compliance with the liquor laws". The *House Policy* addresses, *inter alia*, procedures for the prevention of persons under the age of 18 from purchasing liquor or having liquor purchased for them, primarily by requesting ID in the form of a current driver or rider licence, a current passport or NSW Photo Card from any person who appears to be under the age of 25; refusing service to any person who appears to be intoxicated; ensuring that liquor is not consumed on the Premises or displayed outside the licensed area; ensuring that all staff involved in the sale and supply of liquor are RSA certified. The House Policy also states that "all required signage will be prominently displayed in the correct locations" and that a CCTV surveillance system will be employed in the Premises.
16. **Management Policies and Strategies ALDI Liquor NSW:** this 2-page business internal business policy document states that ALDI is "committed to making a contribution to the community in which we operate and recognise the need to act upon our social obligations to our customers and the wider community". Management policies and strategies include requiring operation of the licensed business within approved trading hours only; use of CCTV surveillance; adequacy of staffing levels; staff training including ensuring staff awareness of NSW liquor legislation, signage, and prevention of intoxication and sale of alcohol to minors; cooperation with "various interested persons" including licensing authorities, local police, community organisations and transport authorities.
17. **Submission from NSW Health Hunter New England Local Health District (Hunter Health) dated 15 January 2015.** This submission objects to the Application. Hunter Health contends that that excessive alcohol consumption in the Greater Taree Local Government Area (LGA) causes health concerns and places strain on the health services in the LGA; granting additional licences will likely exacerbate this problem.
18. In support of this the submission Hunter Health identify a number of factors of concern to them arising from this Application:
  - a) The higher proportions of persons in demographic groups within the suburb of Taree that are known to increase a population's risk of alcohol related harm. These groups include, indigenous persons (8.6% compared to 2.5% for NSW as a whole), people that only speak English at home (92.5% compared to 72.5% for NSW as a

whole), unemployed people (11.1% compared to 16.3% for NSW as a whole), one parent families (23.6% compared to 16.3% for NSW) and renters (36% compared to 30.1% for NSW as a whole) according to 2011 census conducted by the Australian Bureau of Statistics.

- b) The impact of discounted prices for alcohol products (for which ALDI has been publicised) on the quantity of alcohol consumed - citing research, (Gallet, 2007; Wagenaar, 2009) that indicates a positive correlation between increases in price of alcohol and decrease in alcohol consumption.
- c) The suburb of Taree presently has five registered clubs, four hotels, and four packaged liquor outlets. Hunter Health contends that the Victoria Hotel has been closed since 2012 and the removal of the liquor licence will increase the number of outlets within the suburb.
- d) Hunter Health contends that research has found a "clear link" between increasing density and alcohol related harms (Escobedo, LG & Oritz, M, 2002; Livingston M, 2008).
- e) Increased risk of pre-drinking/pre-loading – Hunter Health cite research (Hughes et al, 2007) that suggests a positive relationship between pre-drinking and violence.
- f) Over the last eight years a number of Taree's venues have been placed on the NSW government '*Declared Venues*' list. This included the Fotheringhams Hotel in December 2010 (which the Authority notes was the previous name of the Victoria Hotel), The Victoria Hotel in June 2011, The Royal Hotel and the Victoria Hotel in December 2011, and the Royal Hotel in June 2012.
- g) Higher *domestic-related assault* rates in the Greater Taree LGA in 2014 (**510.9** per 100,000 persons) compared with NSW as a whole (**398.5** per 100,000 persons) according to Bureau of Crime Statistics and Research (BOCSAR) data.
- h) Higher *non-domestic assault rates* in the Greater Taree LGA in 2014 (**473.6** per 100,000 persons) compared to NSW as a whole (**434.9** per 100,000 persons) according to BOCSAR data.
- i) Higher *malicious damage to property* rates in Greater Taree LGA in 2014 (**1195.5** per 100,000 persons) compared with NSW (**946.6** per 100,000 persons) according to BOCSAR data.
- j) Higher rates of *alcohol-attributable hospitalisations* in 2011-12 to 2012-13 (**596.2**) according to NSW Health Population Survey. [The Authority notes that rate of *alcohol-attributable hospitalisations* for NSW for these periods have not been provided].
- k) Higher rates of *adults over 16 consuming alcohol* at a rate that poses an increased risk over their lifetime in Hunter New England Local Health District (**31.5%**) compared to NSW (**26.6%**) in 2013 according to NSW Health statistics.
- l) Higher rates of *students aged 12-17 in Hunter New England Local Health District drinking alcohol* in the past 4 weeks (**35.1%**) compared to NSW (**26.9%**) in 2011 according to NSW Health statistics.
- m) Hunter Health note that the Authority has previously (in 2011) rejected an application by ALDI for a liquor licence at the New Premises.
- n) Hunter Health contends that a significant number of "sensitive facilities" have been omitted from the Applicants CIS document including the following:
  - Taree Medical Centre
  - Wynter Street Medical Centre
  - Albert Street Medical Centre
  - Manning Great Lakes Skin Cancer Clinic
  - Victoria Street Medical Centre
  - Mayo Specialist Medical Centre

- Manning Uniting Church
- Taree Presbyterian Church
- Taree Baptist Church
- Taree Seventh Day Adventist Church
- St Johns Anglican Church
- River City Church
- St Marks Anglican Church
- One Life Church
- Taree High School
- Taree Christian College
- St Joseph's Primary School
- Taree West Public School
- Manning Gardens Public School
- St Clare's High School
- Chatham Public School
- Good Start Early Learning
- Taree and District Pre-School
- North Coast TAFE
- University of Newcastle, Department of Rural Health – Manning Clinical School
- The Little Grub Kindergarten
- Taree Park
- Apex Park
- Edinburgh Park
- Bayview Reserve
- Debreceny Park
- Boyce Park
- Martin Reserve
- William Wynter Park
- Fothering Park
- Queen Victoria Park
- Saxby Park
- Musico Park
- Catham Park
- Mitchell Reserve
- Stokes Park
- Jack Neal Oval.

19. **Submission from the Office of Liquor, Gaming & Racing (OLGR) emailed to the Authority on 31 December 2014.** This submission states that the Application has been assessed using the Automated Liquor Application Risk Matrix and has been categorised as "low risk". That is, the Application has been the subject of an automated risk assessment. OLGR notes that it "does not intend to carry out any further assessment of this application and has no comment at this time".
20. **Submission from Greater Taree City Council (Council) emailed to the Applicant's solicitor on 24 October 2014.** This submission does not support or object to the Application but makes the following submissions:
- a) Council is "supportive of not proposing to sell refrigerated liquor products".
  - b) Council is "supportive of the removal of the licence from The Victoria Hotel, given the anti-social behaviour and complaints associated with that particular licensed premises".
  - c) Council is "supportive of the proposed hours of operation" of the new business.

- d) Council has "concerns regarding the sale of low cost alcohol" because Greater Taree LGA "has a significant number of social determinants for vulnerable people and communities, including a low SEFIA [sic] index, high proportion of low income households, high number of public housing, above average Aboriginal population".
  - e) Council contends that the incidence of alcoholism "can be more prevalent in people from lower socio-economic status".
  - f) The Council has "concerns regarding the location of the alcohol outlet, being directly across the road from Manning Base Hospital". Council states that this facility provides treatment for alcohol abuse and injuries related to alcoholism. Furthermore, Community Health on Pulteney Street provides counselling to people with alcohol issues.
21. **Submission from the Manning Valley Senior Citizens Association (Association) emailed to the Applicant's solicitor on 30 October 2014.** This submission is made in support of the Application. The Association contends that the removal of the liquor licence from the Victoria Hotel would be beneficial by reason that the "Hotel Victoria is next to the park and the riverfront and therefore leads to more vandalism". Furthermore, the Association notes that there are two other hotels in the "vicinity" of the New Premises while ALDI is "stand alone and at reduced hours" and "is convenient for shoppers to take the alcohol home with them".
22. **Letter from the Chief Executive of the Authority (CEO) to the Applicant's solicitor, dated 20 April 2015.** In this letter the CEO notes that the development consent provided by Council states that development details are for a shopping centre while the CDC states that the proposed use of the Premises is for a Retail Supermarket including the sale of liquor. The CEO advises that the "Authority has not been provided with evidence that the proposed premises has the requisite development consent for a hotel, or alternatively that development consent is not required".
23. **Letter from the Applicant's solicitor Mr Grant Cuzack to the CEO, dated 1 May 2015.** Mr Cusack submits that under the Act "a hotel license authorises a licensee to sell liquor for consumption on or away from the licensed premises" and that the use of the conjunction or indicates that "a hotel licensee could elect to sell liquor for consumption on his licensed premises, off his licensed premises or both".
24. Furthermore, with reference to an application for a Dan Murphy's outlet at Manly Vale decided on 8 February 2008, Mr Cusack contends the following:
- ...there is nothing novel about a hotel licence being conditioned so as to be limited to off-premises sales. Indeed, the full bench of the former Licensing Court of NSW determined, over objection, that there was no valid policy reason for not permitting a hotel licence to be used in this way.*
- That Application which was decided by a Full Bench chaired by Mr David Armati LM, expressly **rejected** arguments that it was not in the public interest to remove a hotel licence to a site where the hotel licence would be used solely for the sale of packaged liquor for consumption off the premises.*
25. Mr Cusack also submits that Council granted development approval for use of the Premises as a liquor store and that ALDI proposes to have conditions placed on the license to reflect ALDI's intention to only make sales of liquor for consumption off-premises.
26. This letter includes a transcript of the proceedings before the full bench of the former Licensing Court of NSW in respect of the Manly Vale Dan Murphy's outlet, a copy of the OneGov record of the Manly Vale Dan Murphy's liquor licence, a submission from the Manning Valley Seniors Association, a submission from the Hunter New England District

Department of Family & Community Services (FACS), and a list of community facilities and their distance from the Premises.

27. **Transcript of proceedings before the full bench of the Licensing Court of NSW, dated 8 February 2008.** This transcript concerned an Application by Mr Anthony Charles Leybourne Smith for the removal of a hotelier's licence from 250 Condamine Street, Manly Vale, to 277-283 Condamine Street, Manly Vale.
28. This transcript records that the licence to be removed was the dormant licence of the Peninsula Hotel to subsequently be exercised as a Dan Murphy's outlet. The transcript also records that the development consent which authorised "a liquor retail shop" was sufficient to allow the use of a hotel licence for the purposes Dan Murphy's retail liquor store.
29. **OneGov licence record LIQH400103905 downloaded on 1 May 2015.** This record specifies the licence name for those licensed premises as Dan Murphy's and the licence type is specified as "hotel licence".
30. **Submission from Manning Valley Seniors Association emailed to Mr Grant Cusack on 2 January 2015.** This email repeats the contentions of the earlier submission from the Association and notes that the organisation has over 250 members and the decision to support the Application was unanimous in Association's general meeting.
31. **Submission from Hunter New England District FACS mailed to the Mr Grant Cusack, dated 11 December 2014.** This letter states that FACS "are unable to determine that this particular proposal would adversely affect the local community".
32. **A list of community facilities located in Taree referred to by Hunter Health and their distance from the Premises provided by the Applicant.** This list is as follows:
  - a) Taree Medical Centre 3km
  - b) Wynter Street Medical Centre 400m
  - c) Albert Street Medical Centre 350m
  - d) Manning Great Lakes Skin Cancer Clinic 920m
  - e) Victoria Street Medical Centre 550m
  - f) Mayo Specialist Medical Centre 5km
  - g) Manning Uniting Church 580m
  - h) Taree Presbyterian Church 350m
  - i) Taree Baptist Church 6.3km
  - j) Taree Seventh Day Adventist Church 2.8km
  - k) St Johns Anglican Church 660m
  - l) River City Church 2km approx.
  - m) St Marks Anglican Church 2km approx.
  - n) One Life Church 2km approx.
  - o) Taree High School 750m
  - p) Taree Christian College 6km
  - q) St Joseph's Primary School 6km
  - r) Taree West Public School 800m
  - s) Manning Gardens Public School 3km
  - t) St Clare's High School 3km
  - u) Chatham Public School 3km
  - v) Good Start Early Learning 3km
  - w) Taree and District Pre-School 4km
  - x) North Coast TAFE 770m
  - y) University of Newcastle,

	Department of Rural Health – Manning Clinical School	450m
z)	The Little Grub Kindergarten	6km
aa)	Taree Park	690m
bb)	Apex Park	2km
cc)	Edinburgh Park	1.2km
dd)	Bayview Reserve	980m
ee)	Debreceeny Park	730m
ff)	Boyce Park	1km
gg)	Martin Reserve	1.1km
hh)	William Wynter Park	1km
ii)	Fothering Park	520m
jj)	Queen Victoria Park	700m
kk)	Saxby Park	1.7km
ll)	Musico Park	1.6km
mm)	Chatham Park	3.4km
nn)	Mitchell Reserve	3.2km
oo)	Stokes Park	3.2km
pp)	Jack Neal Oval	3.5km.

33. **Email from Council to Authority staff dated 12 June 2015.** This email notes a DA (767/2007/DA) was approved on 10 August 2007 for use of the Premises as a shopping centre which did not include sale of liquor and that a CDC was issued by a private certifier for a supermarket including the sale of liquor. This email advises that "Council is concerned about the status of the CDC giving approval for the "sale of liquor" without Council consent and is currently investigating whether the CDC may be invalid".

34. **Email from Council to Authority staff dated 12 August 2015.** This email records the following:

*As Council has already granted consent for a shopping centre (defined as a shop) under 767/2007/DA and advice from the Department does not define retail of liquor as anything but a shop, Council does not have the authority to request any further applications.*

*Therefore, it will be at the discretion of the ILGA and the local police.*

35. **Submission from Manning/Great Lakes Local Area Command (LAC) lodged with the Authority on 14 January 2015.** Police object to the Application and make the following contentions or submissions:

- a) "The ALDI supermarket is located near the Central Business District of Taree with an Alcohol Free Zone (**AFZ**) bordering the rear of the premises". Police have provided a partial map which depicts the location of the AFZ in Relation to the Premises. The AFZ is bordered by Wynter Street, Commerce Street and Victoria Street; the eastern border is not depicted. The Premises is located near the corner of Wynter and Commerce Streets.
- b) With regard to local Police resources at present, "only one 2-unit first response vehicle is available to cover the Greater Taree Area during the week and two 2-unit vehicles on a Friday and Saturday night".
- c) There are 41 Packaged Liquor Licensed premises (PLL) in the LAC, with 22 of those liquor stores located in the Greater Taree Area
- d) There are five existing PLL's "within walking distance of Aldi; and two clubs and two Hotels in close proximity".
- e) Police have conducted "covert and overt operations" and have found "a direct link" between "antisocial behaviour" and "liquor purchased from PLL's" in the Taree CBD.



- f) Police contend that the new ALDI liquor store "will be introducing new products at attractive prices for those on low fixed incomes...the standard price of certain products is lower than those offered by the major retail outlets...the vulnerable and disadvantaged will have greater access to higher volumes of alcohol, inevitably leading to increased consumption and further abuse".
- g) Police contend that "the area has a high unemployment rate with many vulnerable and disadvantaged persons including Aboriginal and Torres Strait Islanders (ATSI), chronic alcoholics and repeat domestic violence victims where alcohol is a significant contributing factor in those incidents".
- h) Police contend with respect to Taree that "the ATSI population represents **8.6%** of the total suburb population. For the State of NSW, the ATSI population makes up only **2.5%** of the total population".
- i) Police contend that the median weekly household income for Taree suburb is **\$704**, Port Macquarie suburb is \$855, Forster suburb is \$729 and Raymond Terrace Suburb (which falls within the Port Stephens LGA) is \$1003.
- j) Police contend that Taree suburb has an unemployment rate of **11.1%**, compared to Port Macquarie suburb at 6.8%, Forster suburb 8.1% and Raymond Terrace suburb 8.3%.
- k) Police submit that the Socio-Economic Indexes for Areas (SEIFA) data from the 2011 Census for Greater Taree LGA and state suburb of Taree indicate that those communities are "very disadvantaged" with an Index of Relative Socio Economic Advantage and Disadvantage (IRSAD) score of 2 for Greater Taree and 1 for the suburb of Taree.
- l) Police contend that "the sale of non-refrigerated alcohol may not necessarily prevent immediate consumption particularly when the persons responsible for the street drinking and anti-social behaviour in the Taree CBD frequently consumed warm cask wine and beer after gather for several hours".
- m) Police submit that the rate of *alcohol related mental health incidents* in the Greater Taree LGA (per 100,000 population) for the 2014 financial year was **105** (the Authority notes that Police have not proved the rates for the whole of NSW for comparison).
- n) Police submit that the rate of *alcohol related domestic violence incidents* in the Greater Taree LGA (per 100,000 population) for the same period was **575**, compared to Great Lakes LGA which recorded a rate of **519** (the Authority notes that Police have not proved the rates for the whole of NSW for comparison).
- o) Police submit that *domestic assault and non-domestic assault rates* have increased between 2013 and 2014 (the Authority notes that Police have not proved the rates for the whole of NSW for comparison):
  - the rate of *domestic violence assaults* for the 2013 financial year in Greater Taree was **153** per 100,000 persons
  - the rate of *domestic violence assaults* for the 2014 financial year in Greater Taree was **352** per 100,000 persons
  - the rate of assault for the 2013 financial year in Greater Taree was **290** per 100,000 persons
  - the rate of assault for the 2014 financial year in Greater Taree was **522** per 100,000 persons.
- p) Police contend that Indigenous persons "continue to be overrepresented in alcohol related incidents" in the Greater Taree LGA. [The Authority notes that the term "involvements" has not been defined. The Authority assumes this relates to incidents involving Police]. Police contend the following:
  - In the 2007 financial year **32%** of "alcohol related involvements" involved ATSI persons

- In the 2011 financial year **33%** of "alcohol related involvements" involved ATSI persons
- in the 2014 financial year **36%** of "alcohol related involvements" involved ATSI persons.

36. **Site assessment for ALDI Taree, produced by A & M Consultants Pty Limited, dated 1 October 2015.** This report, commissioned by the Applicant concludes that the grant of a liquor licence to ALDI Taree "would not increase underage drinking or anti-social behaviour" and "would alleviate inconvenience to shoppers wishing to purchase alcohol".
37. The report makes the following contentions:
- a) There is an AFZ that spans the western bank of the Manning river and is bordered by Commerce Street, Wynter Street, and Stevenson Street.
  - b) The ALDI store is located outside of this alcohol free zone but the store has "parking access" via Wynter Street.
  - c) The vast majority of customers "attended this location by vehicle".
  - d) It will be "impossible to leave the Supermarket without going through a manned check point".
  - e) The proposed licenced area of the licensed business will be smaller than most liquor stores in the suburb of Taree and the Aldi store "will close earlier than the 10:00pm closure time of "most bottleshops throughout NSW".
  - f) There are five liquor packaged liquor outlets located within approximately 500 and 700 metres of the Premises and one located within approximately 400 metres of the Premises. The consultant contends that this "does not constitute a short walk" as has been represented in the Police submission to the 2011 ALDI Application.
  - g) The Premises is located "well away" from the entertainment precinct and is "unlikely" to contribute to "pre-loading".
  - h) In relation to public drinking, the consultant contends that there are only three locations near the ALDI store that would be "potential gathering sites for public drinking" and these are all within 250 metres of the local Police station. The consultant contends that those sites did not exhibit signs of alcohol consumption or street crime at the time of inspection. The consultant concluded this based on the lack of "any evidence of discarded liquor containers, graffiti, malicious damage or any other indicators of alcohol consumption or street level crime".
  - i) The consultant contends that a price comparison was conducted with the Taree BWS, Liquorland and IGA stores as well as the Exchange Hotel against the prices of the Menai ALDI and found that "while some wines were slightly cheaper...all spirits and beers were slightly more expensive".
  - j) The consultant contends that the following prices were collated at the time of the assessment:
    - BWS off Manning Street – carton Dry Dock full strength beer \$33.60; carton Tun mid strength beer \$29.00; 2x 2 litre cask Renmano Semillion wine \$20
    - Liquorland in Manning Street Shopping Plaza – carton Maxx full strength beer \$33.00; 4-litre cask De Bortoli Cabernet Merlot \$19
    - BWS in Manning Street Shopping Plaza – carton Dry Dock full strength beer \$33.60; Jim Beam bourbon 750ml \$35; Riverside Landing shiraz 750ml \$4.00; coupons for \$5.00 if you spend more than \$30 on wine
    - IGA Liquor off manning street – 4-litre cask Southern Creek Fruity Lexia wine \$10.00; Jim Beam bourbon 750ml \$34 each if two are purchased; Teachers Scotch 750ml \$34 each if two are purchased

- The Exchange Hotel – 5-litre cask Berry Estate wines \$14 each if two are purchased.

38. **‘Petition for Liquor Licence – ALDI Taree’**. This petition is signed by approximately 950 ALDI customers. It states:

*We, the undersigned, support the Application by ALDI for a small packaged liquor facility (approx. 32 square metres) within the proposed ALDI Supermarket situated at Wynter and High Streets, Taree.*

*We are advised that ALDI proposes removing an existing hotel license (The Victoria Hotel) to the Supermarket and that the licence will be the subject of various conditions/restrictions and permit packaged/take-away liquor sales only.*

*We expect to be able to purchase liquor at the ALDI Supermarket at the same time as we do our grocery shopping without having to travel elsewhere to do so. We would prefer to purchase ALDI’s quality owned-branded liquor products.*

*In our view, the creation of a small liquor department in the ALDI Supermarket is not likely to lead to any increase in crime or anti-social behaviour.*

*We support the grant of a small liquor department for ALDI.*

39. **Publically available BOCSAR crime mapping data for July 2014 to June 2015.**

These crime maps indicate that the Premises:

- a) is located near a low density hotspot, a medium density hotspot, and a high density hotspot for the concentration of incidents of *non-domestic assault*
- b) is located near a low density hotspot and a medium density hotspot for the concentration of incidents of *alcohol related non-domestic assault*
- c) is located within a high density hotspot, as well as near a medium density hotspot and a high density hotspot for the concentration of incidents of *domestic assault*
- d) is located within a high density hotspot and near a low and medium density hotspot for the concentration of incidents of *malicious damage to property*.

40. **Crime data sourced from BOCSAR for calendar year 2013 detailing rates of offences for the Greater Taree LGA compared to rates for NSW as a whole.** This data details rates of *alcohol-related incidents*. It indicates that for calendar year of 2013:

- a) the rate of *alcohol-related assault police* incidents was **41** per 100,000 persons compared to NSW as a whole which had **24** per 100,000 persons
- b) the rate of *alcohol-related domestic-violence assault* incidents was **198** per 100,000 persons compared to NSW as a whole which had **145** per 100,000 persons
- c) the rate of *alcohol-related malicious damage to property* incidents was **180** per 100,000 person compared to NSW as a whole which had **122** per 100,000 persons
- d) the rate of *alcohol related non-domestic violence assault* incidents was **174** per 100,000 persons compared to NSW as a whole which had **191** per 100,000 persons.

41. **SEIFA data published by the Australian Bureau of Statistics (ABS) in 2011**, indicating that the state suburb of Taree and the Greater Taree LGA fall within the first decile on the IRSAD for all suburbs and LGAs in NSW (with a ranking of 10 being the most advantaged).

42. **Authority licensing records.** These records, which are updated regularly and available for purchase from OLGR indicate that within the state suburb of Taree there are:

- a) six (6) existing packaged liquor licenced premises
- b) five (5) registered club licenced premises

- c) five (5) full hotel licenced premises.
43. **Authority license density data.** This data records the liquor licence density in respect of the Greater Taree LGA compared to the State of New South Wales as a whole. It indicates that within Greater Taree LGA there are:
- a) **10.74** club licences per 100,000 persons compared to NSW as a whole which has **20.48** per 100,000 persons
  - b) **24.55** full hotel licenses per 100,000 persons compared to NSW as a whole which has **30.36** per 100,000 persons
  - c) **27.93** packaged liquor licenses per 100,000 persons compared to NSW which has **32.85** per 100,000 persons.

## LEGISLATION

44. The power to grant a new liquor licence is provided by section 45 of the Act, which states:

**45 Decision of Authority in relation to licence applications**

- (1) *The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.*
- (2) ...
- (3) *The Authority must not grant a licence unless the Authority is satisfied that:*
  - (a) *the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and*
  - (b) *practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and*
  - (c) *if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.*

45. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

46. Section 48(5) of the Act states:

**48 Community impact**

- (5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*
  - (a) *the community impact statement provided with the application, and*
  - (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), 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.*

47. An application for a packaged liquor licence is a type of licence prescribed by section 48(2) requiring a CIS and satisfaction of the overall social impact test.

48. In determining the Application, the Authority also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:

**3 Objects of Act**

- (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.*

**APPLICANT CASE ON OVERALL SOCIAL IMPACT**

49. In the CIS document dated 4 December 2014, the Applicant makes submissions and contentions as to how the proposed new packaged liquor business will positively and negatively impact the "local community" (which the Applicant has defined as the state suburbs of Taree, Coopernook, Crowdy Head, Cundletown, Fredericktown, Hallidays Point, Harrington, Manning Point, Old Bar, Pampoolah, Purfleet, Rainbow Flat, Tinonee, Wallabi Point and Wingham) and the "broader community" (which the Applicant has defined as the Greater Taree LGA).
50. In relation to the Victoria Hotel the Applicant notes that this hotel ceased to trade in 2012. However, prior to this the Victoria Hotel had been subject to special conditions as a result of "adverse impacts" arising from the operation of the Victoria Hotel as a late night premises. In 2008 Police commenced proceedings under section 54 of the Act "on the basis of a history of incidents involving intoxication, offensive conduct and violence".
51. Additionally, the Applicant notes that the Victoria Hotel has been on the list of 'declared premises' under the Declared Premises Scheme, and in 2011 a disciplinary complaint was filed by Police, against the Victoria Hotel. These proceedings were withdrawn as a result of the lodgement of a change of boundaries application and the revocation of the extended trading authorisation.
52. The Applicant notes that in 2014 the Greater Taree Council granted consent for the conversion of the Victoria Hotel into a Liquorland store. In relation to this the Applicant notes that Police did not oppose the Liquorland store as the operation of former bottle shop at the Victoria Hotel had resulted in "very few adverse incidents".
53. In relation to the removal of the licence from the Existing Premises to the Premises the Applicant contends the following:
- a) *Significant reduction in size of licensed area.* The licensed area of the Existing Premises is 207 square metres, while the licensed area of the Premises would be approximately 32 square metres.
  - b) *Significant reduction in hours of operation.* The Victoria Hotel had previously been the subject of an extended trading authorisation and was permitted to trade

22 hours per day on Monday to Saturday and 14 hours on Sunday. As a Liquorland store the Existing Premises is permitted to trade between 5:00am until 12:00 midnight Monday to Saturday and 10:00am until 12:00 midnight Sunday. As an ALDI store the licence would trade between 8:30am and 7:00pm Monday, Tuesday, Wednesday, Friday and Saturday; 8:30am to 8:00pm Thursday, and 10:00am to 7:00pm Sunday. These hours are "a fraction of the hours that currently and previously applied".

- c) *Licence only to be exercised as a packaged liquor licence.* The Applicant consents to conditions being imposed upon the license which prevents the sale of non-packaged liquor, the consumption of liquor on the Premises, the licence being removed to other premises, and the licence being reactivated as a hotel.
  - d) *Limited range of liquor.* Only a limited range of liquor will be sold, comprising ALDI brand products with less than 100 lines of liquor.
  - e) *No refrigerated liquor sales.* It is not proposed that refrigerated liquor be sold at the ALDI Supermarket and a condition is consented to in this regard.
  - f) *Licensed area to be adequately defined.* The proposed licensed area will be "adequately" separated from the Supermarket by fixed partitioning and the licensed area will be locked off outside of the hours endorsed. The Applicant notes that the licenced area will be separated from the rest of the Supermarket by 1.8 metre high partitions which have "satisfied" the Authority in previous applications. The licenced area will not trade when the ALDI Supermarket is not trading.
  - g) *CCTV.* The Premises is equipped with CCTV which will cover the licensed area.
  - h) *Liquor Accord.* The Applicant consents to a condition being imposed that required the Applicant to join and be a participant in the Local Liquor Accord.
  - i) *House policy and management policies and strategies document.* The Applicant operates its liquor department in accordance with "stringent liquor sales policies and protocols".
  - j) *Entertainment.* Entertainment will not be provided and a condition is consented to in this regard.
54. With regard to managing negative impacts from the operation of the new business, the Applicant submits that all staff involved in the sale of liquor at the ALDI supermarket will complete an approved RSA course and undertake a special induction course which will include detailed training in respect of the liquor operations, legal requirements and practices and procedures, which will be supplemented with 'refresher' courses to keep staff up to date with changes in the regulatory practice.
55. With regard to development consent the Applicant contends that the "fit-out of the Supermarket is complying development for the purposes of the State Environmental Planning Policy" and a Complying Development Certificate has been issued and accompanies the application.
56. With regard to the type of proposed licensed premises at issue, the Applicant submits that the Application seeks the removal of a hotel licence to an area located within an existing ALDI Supermarket. The licenced premises will be "small in size, will sell a modest range of liquor, and will trade fewer hours than most traditional retail liquor stores".
57. The Applicant submits that "a number of studies" (Nicholas 2006; Briscoe and Donnelly 2003) demonstrate that the "most problematic" venues in terms of *assault and alcohol related harm* are "typically hotels and nightclubs concentrated in late-night entertainment districts".

58. With regard to the scale of the proposed licensed business, the Applicant specifies that the licensed area will "only comprise an area of some 32 square metres". The Applicant submits that this "will be significantly smaller than that of a traditional liquor store" and that the business "will trade fewer hours than most traditional retail liquor stores".
59. The Applicant contends that the business will sell "only a small range of ALDI branded products, including beers, wines and spirits", and on occasion "a limited range of non-ALDI branded products".
60. The Applicant contends that, with a range of "less than 100 lines (products) of liquor", the range offered by the business will be less than the range offered by a "traditional [liquor] store adjoining a supermarket", which the Applicant contends "would generally stock in excess of 1000 lines of liquor".
61. With regard to the location of the proposed new business, the Applicant contends that, since the Premises is located on a "large parcel of land" and as there is an adjoining car park for use by customers of the Supermarket, it is "unlikely that the granting of the licence will result in any adverse impact on the amenity of the area such as by way of noise, litter, traffic etc".
62. With regard to the proposed licensed trading hours, the Applicant submits that the proposed hours of trade are less extensive than the standard trading hours permitted by the Act for a packaged liquor licence, and that the licensed area of this licensed business will not be permitted to be open at any time when the other areas of the Supermarket are not open.
63. The Applicant specifies the proposed trading hours as follows:
- |                     |                    |
|---------------------|--------------------|
| Monday to Wednesday | 8:30am to 7:00pm   |
| Thursday            | 8:30am to 8:00pm   |
| Friday              | 8:30am to 7:00pm   |
| Saturday            | 8:30am to 7:00pm   |
| Sunday              | 10:00am to 7:00pm. |
64. With regard to prevailing liquor licence density in the suburb of Taree and the Greater Taree LGA, the Applicant makes the following contentions:
- Granting the Application "will not result in any change to the density of licences in the Town"
  - The "reduced manner in which the licence will be exercised upon its removal, will significantly reduce the potential for negative impacts that may arise as a result of the operations of the licence"
  - 2014 licence density figures for NSW as a whole compared to the suburb of Taree based upon the 2011 ABS census are as follows:
    - The suburb of Taree has **31.54** club licences per 100,000 persons compared to **20.20** for New South Wales
    - The suburb of Taree has **31.54** hotel licences per 100,000 persons compared to **31.96** for New South Wales
    - The suburb of Taree has **37.85** packaged liquor licences per 100,000 persons compared to **35.09** for New South Wales.
65. The Applicant contends that of the five registered clubs in Taree only one of them provides a "separate" packaged liquor facility being Taree RSL and Golf Club Limited.
66. [The Authority notes that whether or not a club provides a "separate" bottle shop, all registered clubs are authorised to sell takeaway liquor. The Authority further notes that

the Applicant has not specified whether its analysis of "hotel" licensed premises extends to all hotels (including general bars, which are not authorised to sell liquor for takeaway) or only full hotels. The Authority assumes that the Applicant refers to all hotels].

67. In response to the submission from Council the Applicant makes the following submissions:
- a) Council has supported a number of aspects of the Application including the prohibition of refrigerated liquor products, the removal of the liquor licence from the Existing Premises, and the reduction in approved hours.
  - b) In relation to the Council's concern regarding low cost alcohol, the Applicant contends that "there is already a competitive marketplace in the Town of Taree" which includes a two BWS stores, a Liquorland store, a packaged liquor licence associated with an IGA Supermarket and a Cellarbrations store. Furthermore, the Applicant notes that the Council previously granted development consent for a Liquorland Store to operate on the Existing Premises.
  - c) The Applicant contends that in 2011 the Authority deferred the grant bottleshop applications following concerns about the potential social impact of "discount" alcohol, but the Authority found the evidence for these "inconclusive".
  - d) The Applicant contends that ALDI's liquor prices are "broadly competitive" but "not markedly below" competitors such as BWS and Liquorland. [The Authority notes that the Applicant does not provide any price comparisons here to support this contention].
  - e) In relation to the Council's concerns regarding the proximity of the Premises to Manning Base Hospital, the Applicant contends that "a large number" of special interest groups were notified of the Application including NSW Health and no response was received from any hospital or health organisation. [The Authority notes that a submission has been made by Hunter Health, the local health district].
  - f) The Applicant submits that the Hunter Health submission is "understandable" but the Applicant submits that granting this removal will "negate and diminish" the potential for adverse impacts resulting from the exercise of this licence.
  - g) Furthermore, the Applicant contends that the Smoothed Estimate of Standardised Separation Ratio (SSR) provided by Health Statistics NSW indicates that *alcohol related hospitalisations* occur in the Greater Taree LGA at a "much lower rate" compared to NSW as a whole and has been under the state average for the last 16 years. The smoothed estimate of SSR are reported by the Applicant as follows, against a state average of 100:
    - 1998 to 2000 – SSR 91.3
    - 1991 to 2001 – SSR 90.4
    - 2000 to 2002 – SSR 93.9
    - 2001 to 2003 – SSR 92.9
    - 2002 to 2004 – SSR 92.9
    - 2003 to 2005 – SSR 92.6
    - 2004 to 2006 – SSR 91.4
    - 2005 to 2007 – SSR 90.5
    - 2006 to 2008 – SSR 89.9
    - 2007 to 2009 – SSR 94.0
    - 2008 to 2010 – SSR 92.4
    - 2009 to 2011 – SSR 86.1
    - 2010 to 2012 – SSR 85.0
    - 2011 to 2012 – SST 85.4.



68. The Applicant contends that granting the Application will "provide substantial public interest benefits" as follows:
- a) Convenience – customers of the ALDI Supermarket will be able to purchase liquor in conjunction with their grocery shopping, which is consistent with the needs, expectations and aspirations of the community within the meaning of section 3(1)(a) of the Act.
  - b) Avoidance of special trips by Aldi customers.
  - c) Choice – Aldi customers will gain access to a wider range of alcohol at competitive prices.
  - d) Facilitating social/recreational opportunities – the licensed area at the Premises will satisfy "legitimate community demands" for packaged liquor products to be available for social and recreational opportunities.
  - e) Strengthening the viability of other nearby businesses – customers will be encouraged to undertake other shopping in the vicinity of the ALDI Supermarket.
  - f) Economic spin-offs – granting the Application will "contribute to the economic health of the local and broader communities" by creating jobs such as in retail at the liquor outlet, as well as delivery, warehouse and supply-chain staff.
  - g) Contributing to initiatives to moderate the drinking culture – through assistance to community organisations such as ALDI's contribution to the "DrinkWise" initiative.
  - h) Outlet for local producers – granting the Application will provide an alternative outlet for producers such as those based in McLaren Vale or Margaret River.
69. In an email dated 28 October 2015 the Applicant's solicitor Mr Cusack responds to the submissions from Police and makes the following contentions:
- a) In relation to Police contentions regarding crime, the Applicant contends that while Police statistics "create the impression of an increase in alcohol-related crime, particularly alcohol-related DV assault" BOCSAR crime statistics indicate that DV assaults have "markedly reduced".
  - b) Mr Cusack submits BOCSAR crime statistics from July 2006 to June 2015 which indicate that *alcohol-related domestic assault* in the Greater Taree LGA has decreased 8.7 per cent per year over this period by comparison to the rate of decrease for NSW as a whole which has decreased 3.5 per cent per year over the same time frame.
  - c) Mr Cusack submits that this Application seeks to remove an existing hotel licence (rather than grant a new licence) and in so doing removing the licence will reduce the scale, hours and trading activities of the business exercising under the licence.
  - d) Mr Cusack contends that the relocation of the licence would reduce "pre-loading" and reduce instances of assault by reason that this licensed business will be located further away from existing hotels and licenced premises.
  - e) Mr Cusack contends that in comparable local communities there has been no increase in crime as a result of ALDI liquor departments. Mr Cusack contends that towns "similar to Taree" such as Ambarvale have not seen increases in crime as a result of the presence of ALDI liquor departments. Mr Cusack provides crime statistic for NSW and Ambarvale detailing *alcohol related domestic violence* rates from June 2011 to June 2015 which record no change in the rate of crime over this period in Ambarvale and indicates that NSW *alcohol related domestic violence* rates in NSW have decreased 3.9 per cent in the same period. [The Authority notes that Ambarvale is a suburb in South Western Metropolitan Sydney, whereas Taree is a riverside interior town in the Mid North Coast region of New South Wales].

- f) Mr Cusack submits that the Police do not object to the licence being used for the operation of a Liquorland or Cellarbrations store at the Existing Premises which would comprise an area of approximately 200 square metres inside an alcohol free zone but do object to the removal of the licence to a business that would be 32 square metres in area and outside of the Alcohol Free Zone. The Applicant submits that the Police position is "anomalous".
- g) In response to the Police contention that the new ALDI liquor business would "drive prices lower" Mr Cusack contends that Police have provided no evidence that this would be the case.
- h) Mr Cusack submits that ALDI applies state wide pricing and as such ALDI will not reduce prices at this site because of competition or lower incomes in the local market.
- i) On the issue of prevailing liquor licence density Mr Cusack contends that a benefit of granting the Application will be to provide greater convenience and choice to Aldi consumers without increasing overall licence density in the suburb of Taree and Grater Taree LGA.
- j) On the issue of public drinking Mr Cusack contends that, in their submission, Police have stated that they have received few complaints about public drinking. Mr Cusack contends that there is "no evidence" that the proposed new business will contribute to public drinking.

## REASONS

70. The Authority has critically examined the Application and all of the material noted above and has decided to *refuse* the Application pursuant to section 45 of the Act, by reason that the Authority is *not* satisfied, on the material before it, that the overall social impact of granting the Application will not be detrimental to the wellbeing of the local community within the State suburb of Taree or the broader community within the Greater Taree LGA for the purposes of section 48(5) of the Act.

### Local and Broader Community

71. With regard to the overall social impact test proscribed by section 48(5) of the Act and consistent with the Authority's usual regulatory practice, the Authority is satisfied that the relevant local community comprises the state suburb of Taree and the broader community comprises the Greater Taree LGA.
72. The Authority notes that the Applicant has posited that the "local community" comprises a number of areas including the state suburbs of Taree, Coopernook, Crowdy Head, Cundletown, Fredericktown, Hallidays Point, Harrington, Manning Point, Old Bar, Pampoolah, Purfleet, Rainbow Flat, Tinonee, Wallabi Point and Wingham.
73. The Act does not define what "local community" means. Consistent with the Authority's *Guideline 6* and its long established practice, the Authority is satisfied that the local community comprises the State suburb or town in which the proposed licensed premises is to be located.
74. While the Authority accepts that the Applicant has provided reasoning for identifying its (broader) expected catchment area for patronage of the business, and the Authority accepts that a supermarket may well attract patrons from a wider area than the suburb in which it is situated, the Authority is of the view that defining the local community in such a manner by reference to multiple suburbs would lose any "local" focus when assessing social impact. For the sake of regulatory consistency and certainty, the Authority finds

that the state suburb of Taree is the local community, while the broader community comprises the Greater Taree LGA.

### **Overall Social Impact**

75. Applying the overall social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local and broader community.

### **Positive Benefits**

76. The Authority accepts the Applicant's contention that granting the Application will provide some additional measure of convenience to those members of the local and broader community who wish to purchase liquor for consumption off the Premises at the same time as buying their groceries from the ALDI supermarket, as they will be able to do during the licensed trading hours at this ALDI Supermarket.
77. The Authority accepts that there has been considerable demonstrated community support demonstrated by the Applicant from shoppers at ALDI Taree by way of a petition with approximately 950 signatures. The Application has also received support from the Manning Valley Senior Citizens Associated who made a submission in support of the Application. In this respect granting the Application is consistent with community expectations, or at least that proportion of the community who shop at ALDI Taree.
78. The Authority accepts, for the purposes of section 3(1)(a) that removing the licence would be consistent with "expectations, needs and aspirations" of the local community with respect to the local supply of takeaway liquor by retail.
79. However, public agencies responsible for managing and responding to alcohol related social impacts in the local and broader community do not support the Application. Opposition to the Application has not been voiced by local residents, but expert opposition has been voiced by the responsible Local Area Command and the Local Health District. While the Application is not opposed by Council, and development consent has been granted for the relevant use of the Premises, regulatory concerns have also been raised by Council with some aspects of the Application. Support for the proposition is not uniform.
80. The Authority accepts the Applicant's contentions that ALDI customers would gain the benefits of a small range of competitively priced ALDI-branded liquor products at the Supermarket and a small range of other mainstream brands. That is, there will be some enhanced choice of liquor products from granting the license, particularly with respect to ALDI branded products. In this respect granting the Application may also be said to be consistent with promoting the "expectations, needs and aspirations" of the local and broader community within the meaning of section 3(1)(a) of the Act.
81. While the Applicant's submission that granting the Application will, to some extent, provide employment opportunities within the Supermarket may be credible in a general sense, these contended employment benefits have not been specified nor substantiated to any great extent and little weight is given to these contended benefits. It is difficult to discern from the material before the Authority what additional staff the supermarket would require to stock liquor products rather than its current items and whether and if so how many persons would be hired from within the local or broader communities.
82. The Authority accepts the Applicant's assertion that the ALDI store may contribute to initiatives that help to moderate the negative impacts of alcohol and accepts that ALDI

has done so in the past. However, this contended benefit also suffers from a lack of specificity or certainty. The nature or quantum of such support is not specified in the local or broader community. Little weight is given to this contended community benefit.

83. Theoretically, the Authority may accept that there is a community benefit from removing the license from the Existing (hotel) Premises given that, while trading, the Victoria Hotel experienced significant issues with alcohol related anti-social behaviour, having been listed as a declared premises under Schedule 4 of the Act and having been the subject of proceedings brought by Police under section 54 of the Act, relating to instances of intoxication, violence and offensive conduct. However, in a practical sense this benefit is greatly diminished by reason that the Victoria Hotel has not traded since 2012.
84. The Authority accepts that a potential benefit may arise from removing the licence from within an AFZ to an area near that zone. However, the extent of this benefit is greatly diminished by the fact that the Victoria Hotel hasn't traded since 2012 and the Premises is located on Wynter Street, which forms one boundary for the AFZ. That is, the Premises is still located close to an area declared by Council to be an AFZ presumably by reason that Council was attempting to manage public drinking in that area.
85. The Authority is not satisfied as to contended community benefits by way of sales from local producers. The Applicant makes reference to producers from McLaren Vale (South Australia) and Margaret River (Western Australia). The Authority does not accept that these submissions indicate a discernible benefit to the relevant local or broader communities.

### Negative Impacts

86. The Authority accepts that, over time, there will more likely than not be some contribution made from the liquor sold from this ALDI supermarket to alcohol related crime, alcohol abuse, disturbance or adverse impacts on amenity (whether or not they rise to the level of criminality) caused by a minority of customers who abuse the packaged liquor purchased from this new business and adversely impact the local and broader community.
87. The scope of that negative impact from the liquor sales of this new liquor business is of elevated concern, by reason of the circumstances of this particular local and broader community which already exhibit certain adverse indicia of relatively higher rates of alcohol related crime, compounded by acute considerable socio-economic disadvantage.
88. With regard to the prevalence of alcohol related crime, the Authority finds that as a whole, the broader community of the Greater Taree LGA has elevated rates of crime compared to NSW State averages in certain relevant categories.
89. BOCSAR crime data for Greater Taree LGA indicates that for the calendar year of 2013:
  - a) the rate of *alcohol-related assault police* was **41** per 100,000 persons compared to NSW as a whole which had **24** per 100,000 persons
  - b) the rate of *alcohol-related domestic-violence assault* was **198** per 100,000 persons compared to NSW as a whole which had **145** per 100,000 persons
  - c) the rate of *alcohol-related malicious damage to property* was **180** per 100,000 person compared to NSW as a whole which had **122** per 100,000 persons.
90. In the context of an application for the proposed operation of a packaged liquor business, a community's relative exposure to domestic violence and alcohol related domestic violence will be of particular concern to the Authority by reason that packaged liquor is primarily intended to be consumed in the home, where the overwhelming majority of

domestic violence incidents typically occur (as noted in the BOCSAR Report on Crime for the Taree LGA and the Report for NSW as a whole for 2013).

91. Drilling down to the local community, the Authority is satisfied on the basis of BOCSAR crime mapping data that the Premises is located within hotspots for the concentration of *domestic assault* and *malicious property damage* as well as near hotspots for the concentration of *non-domestic assault* and *alcohol-related non-domestic assault*.
92. Deferring to the local knowledge of Police the Authority accepts the observation provided by Police that there have been "significant issues" with "alcohol related anti-social behaviour" in the past in the suburb of Taree and that they have observed a relationship between anti-social behaviour and liquor purchased from packaged liquor outlets in the Taree CBD. While that submission has not been quantified by Police in terms of the nature or frequency of those observations (and has not been given particular weight), the Authority accepts the broad contention that Police have observed the abuse of packaged liquor in the Taree CBD. It is consistent with the BOCSAR crime mapping data showing concentrations of crime in the Taree CBD.
93. Given the location of the Premises, the BOCSAR crime and crime mapping data and the submission from local Police provide an objective cause for concern as to the contribution that packaged liquor sold from this new business may also make, along with the incumbent licensed premises, over time, to a relatively challenging environment for alcohol related crime and anti-social conduct.
94. The Authority notes that the suburb of Taree is ranked in the first decile on the Index of Relative Socioeconomic Advantage and Disadvantage for all suburbs in NSW. The Greater Taree LGA is ranked in the 1<sup>st</sup> decile on the IRSAD for all LGAs in NSW (with a ranking of 10 being the most advantaged).
95. These communities are significantly socio-economically disadvantaged compared to the rest of the State. Socio-economic disadvantaged is not considered in isolation, but it is a negative factor in circumstances where there are also higher rates of alcohol related crime in the local and broader community. The Authority has considered research relating to the relationship between socio economic status, alcohol abuse, and domestic violence, the most important of which is listed in the Schedule to *Guideline 6* available on the Authority website. Notably, research by Loxley et al ('The Prevention of Substance Use, Risk and Harm in Australia: a review of the evidence', 2004) has indicated that there is a positive relationship between alcohol abuse and socio-economic disadvantage, while research conducted by Livingstone ('A Longitudinal Analysis of Alcohol Outlet Density and Assault', 2011) has indicated that there is a positive relationship between the density of packaged liquor retailers and instances of domestic violence.
96. The Authority further notes that there is some concern arising from the increased overrepresentation of certain "at risk" groups in both the local and broader community. The relatively higher representation of persons of ATSI background in the local and broader community compared to state wide rates is another risk factor when assessing the relative vulnerability of this local and broader community to adverse alcohol related social impacts.
97. It is well established that persons of ATSI descent typically have higher rates of abstinence from alcohol than the non-Indigenous population, but considerably higher rates of risky levels of alcohol consumption. (The research known to the Authority is identified in the Schedule to *Guideline 6 – see for National Drug Strategy Household Survey Report, 2013*).

98. The Authority notes that Hunter Health have objected to this Application. In particular Hunter Health notes significant health concerns regarding alcohol consumption in the Greater Taree LGA resulting from both alcohol related crime and from alcohol consumption. Hunter Health notes that there are elevated rates of *adults over 16 consuming alcohol* at a rate that poses an increased risk over their lifetime in the Hunter New England Local Health District (**31.5%**) compared to NSW (**26.6%**) and elevated rates of *alcohol-attributable hospitalisations* in the Greater Taree LGA between 2011-12 and 2012-13 with a rate of 596.2 [although, the Authority notes that Hunter Health has not provided the NSW rate for comparison]. Hunter Health also contends that BOCSAR statistics for *domestic assault* rates for Greater Taree in 2014 (**510.9** per 100,000 persons) were higher than NSW as a whole (**398.5** per 100,000 persons), as were *non-domestic assault rates* (**473.6** per 100,000 person for Greater Taree, compared to **434.9** per 100,000 persons for NSW as a whole).
99. While the data cited by Hunter Health with regard to risky drinking by persons over 16 years of age and students 12-17 years of age is of concern, the weight given to that adverse data is reduced by reason that Hunter New England Local Health District incorporates, but is much broader than, the Greater Taree broader community. The Authority has also had regard to the Applicant's submissions on NSW Health data at the level of the Greater Taree LGA, which indicates that alcohol related hospital separation rates are not above the State as a whole. The Authority accepts that there is an association between high liquor outlet density and adverse social outcomes in the research but it is not clear whether licence densities at the level of this local and broader community are at such relatively high levels that give rise to prima facie concerns.
100. Another adverse factor is the location of the business itself. The Authority accepts as credible the Council's concerns that this new liquor outlet will be located near the Manning Base Hospital. The Authority further notes the proximity of the site to an established AFZ in Taree as has been indicated by the map provided by Police in their submission. These are both adverse factors with regard to the location of the Premises and sensitive sites in the local community. The Authority is satisfied that Council would not have declared an AFZ were the area not problematic for public drinking, and that enabling another business to operate close to that zone is more likely than not to enable liquor consumed from the new business to frustrate the goals of that zone.
101. The Authority notes that this Application proposes the removal of a hotel licence from the Existing Premises to the site of the proposed new Premises. While granting the removal will not increase the overall number of liquor licenses in the local or broader community, liquor licence density per se is not particularly elevated with respect to these communities. Moreover, given that the Applicant is proposing the removal of a *defunct* hotel licence to a site where the licence will actually be used to sell packaged liquor, the Authority does not accept that the removal provides a real benefit or reduction in harm to the local and broader community. The Authority must consider the practical impact of granting the Application in the communities in question.
102. The Authority accepts that the Applicant has included a number of proposals over and above the minimum requirements of the legislation that are factors which may be accepted as objectively reducing or minimising the scope or risk of alcohol related harm arising from the operation of the business in question.
103. The Authority accepts that the small scale of the Premises provides an objective mitigating factor, in that the licensed area of the Premises will constitute approximately only 32 square metres (as indicated by the diagram of the premises provided by the Applicant), accessible only through an existing ALDI Supermarket. The more limited range of products, by comparison to mainstream liquor stores, may also be a factor that

reduces the popularity of this liquor business – although ALDI indicates that it will sell both home brands and run occasional special promotions on mainstream brands.

104. The proposed trading hours of the Premises are reasonably extensive across the week, by reason of the proposed early opening time but the Authority notes that the Applicant proposes to cease sales at 7:00pm every evening except for Thursday when the supermarket will close at 8:00pm. This aspect of the Application is accepted as a mitigating factor, objectively reducing the capacity of liquor purchased from this business to impacts such as public drinking or pre-fuelling on those higher risk weekend nights.
105. The non-refrigeration condition agreed by ALDI (which is standard to ALDI packaged liquor applications) is another harm mitigation factor that is accepted by the Authority as assisting in discouraging the impulse consumption of liquor purchased from this Supermarket at or near the Premises. That is, patrons may be less likely to drink those liquor products that are usually consumed cold in public places and take it home instead. However, the Authority also accepts as credible the submission by Police, that for many residents of these local communities this factor may not prove to be a significant deterrent.
106. The comprehensive harm minimisation measures outlined in the *House Policy and Management Policies and Strategies* provided by the Applicant as part of the Application, including the use of CCTV surveillance, also satisfy the Authority that steps will be taken by the Applicant and its staff to ensure that the extent of adverse impact arising from the abuse of liquor sold from the Premises would be constrained.
107. However, while this measure would serve to reduce the sale of alcohol to minors and to intoxicated persons, it would do little to prevent domestic violence, pre-loading, and other negative impacts of packaged liquor that would occur outside and away from the ALDI Supermarket in the streets of Taree or elsewhere in the broader community that the Supermarket may be expected to service, noting the expected catchment area identified by the Applicant.
108. In conclusion, taking into account the smaller scale, trading hours and location of the business, the Authority is satisfied that over time the business will contribute, along with the incumbent licensed premises supplying packaged liquor to a local and broader community that is already facing challenges in the management of alcohol related anti-social conduct in the Taree CBD, alcohol related domestic violence and alcohol related health outcomes in the broader community.
109. Domestic violence mostly occurs in private residences and will both include alcohol and non-alcohol related incidents. The Authority is concerned that the Premises is located in a hotspot for the concentration of incidents of *domestic violence*, and that the liquor supplied by this business to the local and broader community will contribute, along with the incumbent licensees, to the relatively challenging domestic violence rates to which the broader community is exposed and which, according to crime mapping data, is concentrated within areas located in close proximity to the Premises.
110. While the Authority has insufficient evidence or analysis to find whether granting this removal will cause any overall increase in the volume of consumption of liquor at the level of the local or broader communities, the Authority is satisfied that the discounted liquor will be attractive to financially constrained persons in the local and broader community who abuse packaged liquor and are seeking another supply of liquor at competitive prices. That is, the packaged liquor sales from this business will contribute, along with the incumbent licensees, to what is already a challenging environment for the management of alcohol related harm in the local and broader community.

111. BOCSAR hotspots are calculated by reference to the relative concentration of offences as assessed against the broader community in question – which the Authority notes already has higher than NSW average rates of domestic violence, of which alcohol is a factor in a substantial proportion of cases, and which primarily occurs in private residences rather than licensed premises.
112. The Authority's concern as to the adverse alcohol related social impacts upon the local and broader community are enhanced by the cumulative consideration of a number of factors – including the relatively poor BOCSAR crime data and troubling information from local Police relevant to the local and broader community, the compounding concerns arising from considerable socio economic disadvantage across the local community and the higher representation of an "at-risk" ATSI population in the local and broader community.

## CONCLUSION

113. Having considered the found positive benefits and negative impacts the Authority is not satisfied for the purposes of section 48(5) of the Act, that the overall social impact of granting *this* Application would not be detrimental to the well-being of *these* local and broader communities.
114. In making this decision the Authority has had regard to all of the statutory objects of section 3(1) and has taken into account all of the considerations prescribed by section 3(2). It has given weight to sub-section 3(2) (a), the need to minimise harm associated with misuse and abuse of liquor, and sub-section 3(2)(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.
115. While the decision has not turned on this aspect of the proposal the Authority records that it does not endorse, from a policy perspective the proposed use of a hotel licence for the purposes of running a new packaged liquor business.
116. The Authority considers it in the public interest in the due administration of the licensing scheme provided by the Act for licensed businesses to actually operate pursuant to the designated licence type that is provided by Parliament for the type of business in question.
117. While the Authority's decision to refuse the Application has not turned on the Applicant's proposed use of a hotel licence for the conduct of a packaged liquor business, the Authority does not consider it in the interests of promoting the balanced development of the liquor industry (an object of section 3(1)(b) of the Act) for a licence that was granted for one type of licensed business to be re-tasked for a substantially different type of licensed business.



Micheil Brodie  
**Chief Executive**

**DATED** 23 February 2016