



Mr Grant Cusack  
Hatzis Cusack Lawyers

gc@hatziscusack.com.au

26 September 2017

Dear Mr Cusack

**APPLICATION NO:** APP-0003016917  
**APPLICATION FOR:** Packaged Liquor Licence  
**TRADING HOURS:** Monday to Wednesday 8:30am – 8:30pm  
Thursday 8:30am – 9:00pm  
Friday – Saturday 8:30am – 8:30pm  
Sunday 10:00am – 8:00pm  
**APPLICANT:** ALDI FOODS PTY LIMITED  
**LICENCE NAME:** ALDI Hillsdale  
**LICENSED PREMISES:** Shop M2 Southpoint Shopping Centre  
238 – 262 Bunnerong Road  
HILLSDALE NSW 2036  
**ISSUE:** Whether to grant or refuse an application for  
a packaged liquor licence  
**LEGISLATION:** Sections 3, 29, 30, 40, 45 and 48 of the  
*Liquor Act 2007*

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

The Independent Liquor & Gaming Authority considered application number APP-0003016917 at its meeting on 16 August 2017 and, pursuant to section 45 of the *Liquor Act 2007*, 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 2:30 AM and 8:30 AM 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. Restricted trading & NYE (std)  
Retail sales  
Good Friday Not permitted  
December 24th Normal trading Monday to Saturday,  
10:00 AM to 10:00 PM Sunday  
Christmas Day Not permitted  
December 31st 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 is to be operated at all times in accordance with the ALDI Management Policies and Strategies and House Policy documents, as submitted to the Independent Liquor and Gaming Authority in support of the licence application and as may be varied from time to time after consultation with the Alcohol Licensing Enforcement Command of NSW Police. A copy of these documents is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
5. The licensee will ensure the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed solid and permanent barrier.
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 participant in the local liquor accord.
8. 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
  - (a) the system must record continuously from opening time until one hour after the premises is required to close,
  - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
  - (c) any recorded image must specify the time and date of the recorded image,
  - (d) the system's cameras must cover the following areas:
    - (i) all entry and exit points on the premises, and
    - (ii) all publicly accessible areas (other than toilets) within the licensed area.
- 2) The licensee must also:
  - (a) keep all recordings made by the CCTV system for at least 30 days,
  - (b) ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
  - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

If you have any enquiries about this letter, please contact the case manager via email to [charles.rivers@liquorandgaming.nsw.gov.au](mailto:charles.rivers@liquorandgaming.nsw.gov.au).

Yours faithfully



David Armati  
Deputy Chairperson  
For and on behalf of the Independent Liquor & Gaming Authority

## **STATEMENT OF REASONS**

### **DECISION**

1. On 31 May 2017, ALDI Foods Pty Limited (“the Applicant”) lodged an application for a packaged liquor licence for premises located at Shop M2 Southpoint Shopping Centre, 238 – 262 Bunnerong Road HILLSDALE NSW 2036 (“the Application”) with Liquor & Gaming NSW (“L&GNSW”) for determination by the Independent Liquor & Gaming Authority (“the Authority”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority decided to grant the Application.
3. In making this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 29, 30, 31, 40, 45 and 48 of the Act, and the relevant provisions of the *Liquor Regulation 2008* (“the Regulation”).

### **MATERIAL CONSIDERED BY THE AUTHORITY**

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

### **LEGISLATIVE FRAMEWORK**

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

#### Objects of the Act

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

### Trading hours

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

### Minimum procedural requirements

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

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

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

### Community impact statement

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

### Provisions specific to packaged liquor licence

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

## **KEY FINDINGS**

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

### Validity, procedural and trading requirements

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

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

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

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

- (a) the Applicant is a fit and proper person to carry on the proposed business, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- (b) practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible service of alcohol, having regard to the Applicant's Plan of Management ("POM") and the conditions to be imposed on the licence, and
- (c) the requisite development consent is in force, based on Complying Development Certificate No. 16/3245/01 issued by Steve Watson & Partners on 15 May 2017, and the Notice of Determination of Development Application 01/537 issued by City of Botany Bay Council on 14 June 2002.

#### Community impact statement

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

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

#### Positive social impacts

25. The Authority accepts, based on the information available, the Applicant's contention that some population growth is likely to occur in Hillsdale in the coming years. The Authority also accepts that the anticipated population growth will create further demand for packaged liquor.

26. The Authority accepts the Applicant's claim that the granting of the licence will provide an additional measure of convenience to customers of the ALDI Supermarket who wish to purchase liquor items along with their grocery items, however notes that visitors to Southpoint Shopping Centre, within which the ALDI Supermarket will be located, can already access grocery and liquor products together at the existing Woolworths Supermarket and adjoining BWS outlet.

27. The benefit of increased convenience is further reduced on the basis of the small size of the Premises. A smaller packaged liquor facility is less likely to carry a comprehensive range of liquor products, meaning that customers of the ALDI Supermarket might still prefer to shop at an alternative packaged liquor facility.

28. The Authority accepts the Applicant's submission that the Premises will sell a range of principally ALDI-branded liquor products which are not currently available elsewhere in Hillsdale, however notes that the range of additional products to be made available is limited.

29. The Authority accepts that there is only one existing packaged liquor facility in Hillsdale, and that it is likely that an alternative option would be a welcome addition to the local community.
30. The Authority is satisfied that there were no objections to the Application received from any stakeholders, special interest groups, occupiers of neighbouring residents or any other members of the public. Furthermore, NSW Police made a submission in response to the Application which advised that it has no objection to the proposal.

#### Negative social impacts

31. Whilst the Authority accepts the results of the 2015 ALDI customer survey that suggests that the majority of the ALDI customers surveyed expect ALDI to sell liquor, and that just over half indicated that they would be inconvenienced if ALDI were not to sell liquor, the customers surveyed shopped at 20 ALDI store locations currently selling liquor across NSW and there is no local evidence to suggest that the prospective customers of ALDI Hillsdale share the same expectations and outlook on convenience.
32. The Authority notes that there is little evidence of any significant degree of support for the proposal amongst members of the local or broader communities. The only indication of any such support is the fact that no submissions in opposition to the Application were received.
33. The Authority notes from the BOCSAR data that, for the year ending March 2017, the Premises is located in a medium density hotspot for domestic assault and a low density hotspot for malicious damage to property. There are, however, no hotspots for non-domestic assault or alcohol-related assault in the suburb of Hillsdale.
34. The Authority is satisfied that alcohol-related offences are occurring at much lower than average rates in Hillsdale suburb and the two LGAs that now comprise Bayside LGA. The Authority acknowledges, in particular, that alcohol-related domestic assault occurred at a rate of only 35.8 per 100,000 in Hillsdale in the year ending March 2017, compared to the corresponding NSW rate of 114.7. The rate was steady over the two years to March 2017.
35. The Authority accepts that data provided by NSW Health indicates that, whilst residents of the former Rockdale and Botany Bay LGAs are dying from alcohol-related health issues at a lower than average rate, residents of the former Botany Bay LGA are being hospitalised as a result of alcohol-related health problems at a higher than average rate.
36. The Authority has had regard to the ABS data indicating that, as at 2011, Hillsdale was relatively disadvantaged in comparison with other suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage, ranking in the 3<sup>rd</sup> decile. Rockdale LGA ranked in the 10<sup>th</sup> decile, and Botany Bay LGA the 7<sup>th</sup>, when compared to other LGAs in NSW.
37. Whilst, as noted above, there is evidence that the broader community is susceptible to alcohol-related illness and injury, along with evidence of socio-economic disadvantage at the local community level, the Authority's concerns regarding these indicia of vulnerability to alcohol-related harm are somewhat alleviated by the very low density of packaged liquor licences and very low rates of alcohol-related crime in Hillsdale. The Authority is satisfied that these factors adequately mitigate the risks that are associated with this additional packaged liquor facility given the prevailing scope of the alcohol-related problems being experienced by the local and broader communities.
38. The Authority is also satisfied that any risk associated with the granting of the Application will be further mitigated by the imposition of special licence conditions and by the Applicant's adherence to the "Management Policies and Strategies" and "House Policy" documents lodged with the Application.

39. The Authority also accepts that ALDI is an experienced operator of many packaged liquor licences, each of which conforms to the business model outlined in the Application.

#### Overall social impact

40. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.

41. Furthermore, the Authority is satisfied that a decision to grant the licence would be consistent with the objects of the Act to regulate the supply of liquor and facilitate the responsible development of the liquor industry in line with community expectations and needs.

42. Accordingly, the Authority has decided to grant the Application.

#### Applicant's subsequent submission in respect of the CCTV condition

43. Following the Authority's decision on 16 August 2017 to grant the Application, the Applicant made a further submission on 13 September 2017, at the Authority's invitation, in respect of the proposed conditions.

44. Relevantly, the Applicant did not consent to the imposition of a condition in respect of CCTV, and requested to be given an opportunity to make additional submissions if the Authority is minded to impose the condition despite the submission.

45. The Authority has considered the submission and finds that, having regard to all relevant circumstances, the reasons set out in the submission do not warrant a departure from the Authority's current policy position to impose the CCTV condition, in the proposed form, on all new packaged liquor licences.

46. Given that the Applicant has already been provided with the opportunity to comment on the condition, the Authority is not minded to invite further submissions.



David Armati  
Deputy Chairperson

#### **Important Information:**

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

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

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

## SCHEDULE

1. Notice of Determination of Development Application 01/537 issued by City of Botany Bay Council on 14 June 2002, approving the redevelopment of an existing shopping centre, including the construction of a residential tower.
2. ABS SEIFA data based on the 2011 Census indicating that Hillsdale suburb ranked in the 3<sup>rd</sup> decile compared to other suburbs in NSW, and Rockdale and Botany Bay LGAs ranked in the 10<sup>th</sup> and 7<sup>th</sup> deciles respectively compared to other local government areas in NSW, on the Index of Relative Socio-Economic Advantage and Disadvantage.
3. 2011 Census QuickStats for Rockdale and Botany Bay LGAs.
4. HealthStats NSW data relating to alcohol attributable deaths by local government area, 2001-2002 to 2012-2013, indicating that the Smoothed Estimate of Standardised Mortality Ratio was 87.70 for Rockdale LGA and 92.60 for Botany Bay LGA for the period 2012-2013.
5. HealthStats NSW data relating to alcohol attributable hospitalisations by local government area, 2001-2003 to 2013-2015, indicating that the Smoothed Estimate of Standardised Separation Ratio was 77.30 for Rockdale LGA and 106.90 for Botany Bay LGA for the period 2013-2015.
6. BOCSAR Crime Hotspot Maps for Hillsdale and surrounding suburbs for the year ending March 2017.
7. NSW crime statistics for the year ending March 2017, published by BOCSAR, for Hillsdale suburb and the two LGAs that have combined to comprise Bayside LGA, Botany Bay LGA and Rockdale LGA. This data indicates that:
  - the rate of alcohol-related domestic assault incidents recorded by NSW Police for Hillsdale suburb was 35.8 per 100,000 persons, for Botany Bay LGA was 79.4 and for Rockdale LGA was 78.3, well below the State-wide rate of 114.7 per 100,000 persons;
  - the rate of alcohol-related assault incidents recorded by NSW Police for Hillsdale suburb was 71.7 per 100,000 persons, for Botany Bay LGA was 148.1, and for Rockdale LGA was 126.5, well below the State-wide rate of 263.5 per 100,000 persons; and
  - the rate of malicious damage to property incidents recorded by NSW Police for Hillsdale suburb was 350.5 per 100,000 persons, for Botany Bay LGA was 740.5, and for Rockdale LGA was 568.0, below the State-wide rate of 816.4 per 100,000 persons.
8. A letter to the Applicant from Transport Roads & Maritime Services dated 12 April 2017, making a number of recommendations.
9. A letter to the Applicant from Family & Community Services dated 19 April 2017, declining to provide “input into the submission”.
10. ASIC Current Organisation Extracts for ALDI PTY LTD ACN 086 493 950, ALDI FOODS PTY LIMITED ACN 086 210 139 and PO SANG BROTHERS INVESTMENTS (AUSTRALIA) PTY LTD ACN 076 850 532, dated 12 and 18 May 2017.
11. Complying Development Certificate No. 16/3245/01 issued by Steve Watson & Partners on 15 May 2017 for internal fitout to tenancy M2 for use as ‘ALDI’.

12. CIS Category B dated 18 May 2017, with accompanying document titled “Additional Information – Application and Community Impact Statement”.
13. Application form for a packaged liquor licence, lodged 31 May 2017, accompanied by the following documents:
  - “Management Policies and Strategies – ALDI Liquor – NSW”; and
  - “ALDI Liquor – NSW – House Policy”.
14. Plan of the proposed licensed area lodged with the Application on 31 May 2017.
15. An email from Botany Bay Local Area Command advising that NSW Police has “nil objections” to the Application, dated 5 June 2017.
16. Liquor licensing records from L&GNSW as at 13 July 2017 indicating:
  - Hillsdale suburb had one packaged liquor licence, equivalent to 18.17 packaged liquor licences per 100,000 of population;
  - Bayside LGA had 47 packaged liquor licences, equivalent to 32.40 packaged liquor licences per 100,000 of population; and
  - NSW had 2,489 packaged liquor licences, equivalent to 33.27 packaged liquor licences per 100,000 of population.
17. Certifications of Advertising Application signed by Mr Grant Cusack and Mr Anthony Cox, dated 19 July 2017.
18. “Submission in Response to Assessment of Application” from Grant Cusack to L&GNSW, dated 19 July 2017.
19. Google maps indicating the location of the Premises, extracted on 25 July 2017.
20. Submission from the Applicant, by email dated 19 September 2017, in respect of the proposed conditions.