



Mr Grant Cusack
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8 February 2017

Dear Mr Cusack,

APPLICATION NO: 1-4968592161
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Wednesday 8:30AM – 8:30PM
Thursday 8:30AM – 9:00PM
Friday 8:30AM – 8:30PM
Saturday 8:30AM – 8:00PM
Sunday 10:00AM – 8:00PM

APPLICANT: ALDI Pty Ltd

PROPOSED LICENSED PREMISES NAME: ALDI North Kellyville

PREMISES LOCATION: 133-139 Samantha Riley Drive & 12 Hezlett Road, KELLYVILLE, NSW 2155 (Premises)

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

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

INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR NEW PACKAGED LIQUOR LICENCE – ALDI NORTH KELLYVILLE, KELLYVILLE

The Independent Liquor and Gaming Authority considered application number 1-4968592161 at its meeting on 25 January 2017 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the application subject to the following conditions:

- Trading Hours**
Monday to Wednesday 8:30AM – 8:30PM
Thursday 8:30AM – 9:00PM
Friday 8:30AM – 8:30PM
Saturday 8:30AM – 8:00PM
Sunday 10:00AM – 8:00PM

2. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6-hours between 2:30AM and 8:30AM during each consecutive period of 24-hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.

3. Retail Sales

Good Friday	Not permitted
December 24 th	Normal trading
Christmas Day	Not permitted
December 31 st	Normal trading

4. 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.

5. The licensee must ensure compliance with the *Management Policies and Strategies* and *House Policy* documents lodged with the Independent Liquor and Gaming Authority (Authority) on 19 August 2016 and must provide to the Authority copies of those documents as they are developed or updated from time to time.

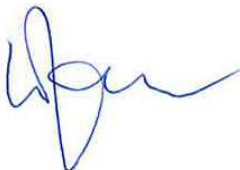
6. The licensee must ensure that the liquor sales area is adequately defined from the rest of the supermarket by means of a fixed, solid and permanent barrier.

7. The licensee or its representative must join and be an active participant in the local liquor accord.

8. The licensee will not sell refrigerated liquor products from the licensed premises.

If you have any enquiries about this letter please contact the case manager, Ms Santina Causa, via email to santina.causa@ilga.nsw.gov.au.

Yours faithfully,



Philip Crawford
Chairperson

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

STATEMENT OF REASONS

Material before the Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the packaged liquor licence application lodged on 19 August 2016 (Application), the accompanying community impact statement (CIS) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to the relevant liquor licensing records and licence density data maintained by Liquor and Gaming NSW (LGNSW), Bureau of Crime Statistics and Research (BOCSAR) crime data and Australian Bureau of Statistics (ABS) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. That material is listed and, in some cases, briefly summarised in the Schedule.

Summary of Further Submissions

3. NSW Aboriginal Affairs submission dated 23 August 2016, in which the office advises that it has “no objection” to the Application on the proviso that the Applicant has also notified the NSW Aboriginal Land Council and the Local Aboriginal Land Council of the proposal and objection process.
4. Letter from the Applicant’s solicitor, Mr Grant Cusack, Hatzis Cusack Lawyers, dated 21 December 2016.
 - (a) The Applicant consents to the imposition of licence conditions, should the Application be granted, fixing the 6-hour closure period, requiring the licensed premises to not operate with a greater overall level of social impact than disclosed in the Application and CIS, requiring compliance with the *Management Policies and Strategies* and *House Policy* dated 19 August 2016, requiring the liquor sales area to be adequately defined from the rest of the supermarket by a fixed, solid and permanent barrier, prohibiting the sale of refrigerated liquor products and requiring the licensee or representative to be an active participant in the local liquor accord.
 - (b) This 13-page document also provides information regarding the scale, reduced licence hours, restricted manner of operation of the proposed liquor business to operate on the Premises, features of its location, planning approvals for the proposed use of the Premise, population growth in Kellyville, contended positive benefits to the community from granting the Application, prevailing licence density, SEIFA and demographic data, health data, the position of NSW Police, the position of neighbouring occupiers and special interest groups and the positions taken by NSW Health, Roads and Maritime Services (RMS), Family and Community Services and NSW Aboriginal Affairs.
5. Letter from Mr Cusack dated 9 January 2017. In this two-page letter the Applicant notes that “the Secretary has not raised any objection to the Application and indicates that LGNSW does not intend to carry out any further assessment of the Application”. In response to the EVAT assessment for the Premises, the Applicant notes that the one

risk factor recorded as high is the proportion of all licensed venues that are late night trading. The Applicant submits that this Application proposes trading hours that are “well within the standard hours”. The Applicant notes that Police “had no objection” to the Application, but Police acknowledge that security measures including CCTV will be in place within the store. The Applicant notes that the *Management Policies and Strategies* and *House Policy* dated 19 August 2016 prescribes measures that will be in place on the Premises in relation to CCTV (including coverage of the licensed area, including entry and exit points).

Legislative Framework

6. The legal requirements for the making of a valid application for a new liquor licence are provided by section 40 of *the Liquor Act 2007* (Act) and the *Liquor Regulations 2008* (Liquor Regulations). The power to grant an application for a liquor licence is provided by section 45 of the Act.
7. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
 - (1) *The objects of this Act are as follows:*
 - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
 - (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*
8. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
9. An application for a new packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required.
10. Section 48(5) of the Act requires that the Authority must not grant an application unless satisfied that “the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community”.
11. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Kellyville, while the broader community comprises the relevant LGA, which at the time of this decision is The Hills Shire.

Analysis of Relevant Facts

12. The Authority is satisfied, on the basis of the Application and CIS material before it, that, for the purposes of section 40 of the Act, the Application has been validly made and the minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
13. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a packaged liquor licensed venue of the kind proposed in the Application material. The Authority notes that no probity issues were raised with regard to the Application following consultation with law enforcement agencies including Police.
14. The Authority is further satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place upon the commencement of licensed trading on the Premises. This finding is made on the basis of the Applicant's *Management Policies and Strategies* and *House Policy* dated 19 August 2016.
15. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises that is the subject of this Application falls within the scope of the development consent that is currently in force with regard to the Premises. This finding is made on the basis of the Notice of Determination, 799/2015/JP, dated 30 July 2015 issued by The Hills Shire Council (Council).

Social Impact – Positive Benefits

16. The Authority is satisfied, on the basis of the Application, CIS and additional material supplied by the Applicant that granting this new licence will provide some modest benefit of convenience and choice to those members of the local and broader community who wish to purchase ALDI liquor products at this location in Kellyville.
17. The Authority accepts the Applicant's contention that it distributed the consultation notice to stakeholders and neighbouring premises and did not receive any adverse submissions. On this basis the Authority is satisfied that granting this Application is consistent with the "expectations, needs and aspirations of the community" in respect of the local community of Kellyville, being an object of section 3(1)(a) of the Act.
18. The benefits of additional convenience are constrained by the six packaged liquor licensed premises that are already available within the suburb of Kellyville. Notwithstanding the incumbent liquor licences, the Authority accepts the Applicant's information provided with the CIS that the local and broader community are accommodating considerable housing development and population growth. The Authority accepts the information provided by the Applicant that the area known as "North Kellyville" was one of the first precincts to be released in the Government's priority growth areas and the first within the North-West priority growth area. The Authority accepts the Applicant's contention that development growth in the local and broader community is projected to involve "25,300 new homes and 45,250 new jobs" projected for The Hills Shire" and that the North Kellyville Precinct has been "planned to achieve the Growth Centre's commissioned target of providing 4,500 dwellings". The Premises will be situated within one of only two commercial centres proposed for the North Kellyville Precinct.

19. To the extent that granting the Application will provide additional convenience to ALDI shoppers and enable the local community to purchase ALDI branded products within the local community of Kellyville, the Authority is satisfied that the proposed new licensed area will develop, in the public interest, to a modest extent, the liquor industry serving the *local* community for the purposes of section 3(1)(b) of the Act.
20. The Applicant contends that the positive benefits to granting the Application include reducing escaped expenditure (from the North Kellyville Growth Precinct), increasing support / custom of the local shopping centre, reducing traffic, increasing in employment, contributing to community organisations (such as ALDI's contribution to *DrinkWise*) and avoidance of special trips to other packaged liquor facilities or other ALDI Supermarkets. However, given the complex economic nature of these economic claims, the Authority is not able to give significant weight to these purported community benefits, especially in circumstances when the Applicant has provided little by way of supporting evidence or analysis substantiating these claims. The accepted benefits of a modest increase in convenience, choice and development of the industry are noted above.

Social Impact – Negative Impacts

21. Having reviewed all of the material before it, the Authority considers that over time there is a risk that the liquor sold from this new licensed business will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse packaged liquor.
22. The Authority notes that the Applicant seeks for the Premises to be licensed from 8:30AM – 8:30PM Monday to Wednesday, 8:30AM – 9:00PM on Thursday, 8:30AM – 8:30PM on Friday, 8:30AM – 8:00PM on Saturday and 10:00AM – 8:00PM on Sunday. The Authority accepts the Applicant's submission that the hours sought are less than the standard hours potentially available for packaged liquor licence pursuant to the standard licensed trading hours prescribed by section 12 of the Act, but given the early opening time they are reasonably extensive across the course of each day and the week.
23. The Authority is satisfied, on the basis of the Application and CIS, that the scale of the licensed area of the proposed new Premises (45sqm) is relatively small. The packaged liquor licence will apply only to a small defined area of the existing ALDI Supermarket and will be separated from the remainder of the store by means of a fixed, solid and permanent barrier. The Authority is also satisfied, on the basis of this information, that the liquor sold will principally comprise a limited range of ALDI branded products (including beer, wines and spirits), with a small selection of non-ALDI branded products being available as "special products" for a limited time until sold out. The Authority accepts, on the basis of the information provided by the Applicant, that no more than 100 types/ lines of liquor will be sold, which is substantially less than the range of products sold by a mainstream packaged liquor business. These are factors that tend to reduce the scope of negative impact by comparison to other packaged liquor premises.
24. The Authority has regard to the *Management Policies and Strategies* and *House Policy* dated 19 August 2016 which include policies for the responsible service of alcohol, measures to ensure minors do not gain access to liquor and security measures

(including CCTV). The Authority has also had regard to ALDI's practice, made enforceable by a licence condition, of not selling refrigerated liquor – which will serve as a disincentive to impulse consumption or public drinking in nearby public places after purchase of liquor from the Premises.

25. The Authority accepts the Applicant's submission that granting the Application will afford members of the local community the convenience of being able to purchase packaged liquor products while grocery shopping at the ALDI supermarket.
26. With regard to licence density, the Authority further notes, on the basis of LGNSW liquor licensing records, that the suburb of Kellyville currently has 6 packaged liquor licenced premises, while The Hills Shire LGA has 57 packaged liquor licenced premises. Licence density in the local community is not, per se, a factor of concern, although licence density is elevated in the broader community. Notwithstanding this, the Authority is satisfied, on the basis of the SEIFA and BOCSAR crime data, that the Premises will operate in an affluent local and broader community that is exposed to relatively benign rates of alcohol related crime.
27. The Authority derives considerable reassurance from the BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015 which records that during the 2014/15 financial year The Hills Shire LGA recorded lower rates per 100,000 persons of population for the occurrence of *alcohol related assault Police* incidents, *alcohol related non-domestic violence assault* incidents, *alcohol related domestic violence assaults* and *alcohol related offensive behaviour* incidents than NSW as a whole.
28. With regard to prevailing crime data, BOCSAR Crime Maps for the period between July 2015 – June 2016 indicate that the Premises is not located within a density *hotspot* for incidents of *domestic assault*, incidents of *non-domestic assault* or for incidents of *malicious damage to property*.
29. The Authority notes, on the basis of the NSW Department of Health *Healthstats* Selected Reports dated 4 January 2017, that the Smoothed Estimate of Standardised Separation Ratio (SSSR) for *alcohol attributable hospitalisations* for The Hills Shire LGA in 2013-2015 was 122.1. The SSSR is accepted by the Authority as providing a moderate risk factor compared to the NSW average set at 100. While this evidence does not indicate that alcohol hospitalisation is of serious concern, the rate is elevated for the broader community. This is an adverse but not decisive factor in this case. The SSSR for *alcohol attributable deaths* for The Hills Shire LGA in 2013-2015 was 84.5, which is substantially lower than the State wide average. Furthermore, no adverse submission was made by the Department of Health when consulted on the Application and, as noted below, socio economic disadvantage is not a compounding risk factor for these communities, which are on the whole well-resourced to deal with any alcohol related impacts when they occur.
30. The Authority notes that agencies with a law enforcement capacity, including Police, LGNSW and Council, do not object to the Application.
31. The Authority notes, on the basis of the ABS SEIFA data, that both the suburb of Kellyville and The Hills Shire LGA are advantaged compared to other local government areas and State suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage, with both Kellyville and The Hills Shire LGA ranked in the 10th decile on the Index (with a decile ranking of 10 being the most advantaged).

32. When making this decision Authority has had regard to all of the conditions to which the licence will be subject and the reasonably detailed measures set out in the *Management Policies and Strategies* and *House Policy* dated 19 August 2016 which will be enforceable by way of a licence condition.

Conclusion

33. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision. The interested parties, including Police, and all other parties were consulted as required by the legislation.
34. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities.
35. The Application is granted pursuant to section 45 of the Act.
36. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) – including (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour); (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Decision Date: 25 January 2017

Philip Crawford
Chairperson

Important Information:

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

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations. For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>

SCHEDULE

Material before the Authority

1. Notice of Determination, reference number 799/2015/JP, issued by The Hills Shire Council dated 30 July 2015.
2. LGNSW Environment and Venue Assessment Tool (EVAT) reference LA16/06470 dated 14 March 2016.
3. The Hills Local Area Command NSW Police Submission from Senior Constable Michael Xuereb dated 25 July 2016.
4. Plan or diagram of proposed licensed area on the Premises dated 26 July 2016.
5. CIS form and supporting material dated 16 August 2016 and lodged with the Application. The supporting material includes:
 - (a) ASIC Current Organisation Extract for ALDI Foods Pty Ltd dated 31 May 2016.
 - (b) Submission from Kerry Ryan, Road User Safety Officer, Roads and Maritime Services, dated 11 July 2016.
 - (c) ASIC Current Organisation Extract for Combined Projects (Kellyville) Pty Ltd (Premises owner) dated 11 August 2016.
 - (d) Public Consultation Site Notice, Police Notice and Local Consent Authority Notice dated 16 August 2016.
 - (e) Community Impact Statement in support of the CIS prepared by Hatzis Cusack Lawyers and received 19 August 2016.
 - (f) Document titled "Additional information – 6-hour closure period" prepared with the assistance of Hatzis Cusack Lawyers and received 19 August 2016.
 - (g) List of stakeholders and special interest groups consulted by the Applicant.
 - (h) Map of the Premises and surrounding streets.
6. Application Form for packaged liquor licence lodged 19 August 2016.
7. *ALDI Management Policies and Strategies* and *ALDI House Policy* lodged on 19 August 2016.
8. NSW Aboriginal Affairs submission dated 23 August 2016.
9. Email from licensing staff to Mr Grant Cusack, Solicitor for Hatzis Cusack Lawyers, dated 19 December 2016.
10. Letter from Mr Cusack dated 21 December 2016.
11. Email from licensing staff to Mr Cusack dated 4 January 2017.
12. Letter from Mr Cusack to licensing staff dated 9 January 2017.
13. Google Maps of the Premises and surrounding area downloaded 4 January 2017.
14. NSW Department of Health *HealthStats* Selected Reports for The Hills Shire LGA dated 4 January 2017.
15. 2011 Census *QuickStats* information downloaded from the Australian Bureau of Statistics (ABS) website on 5 January 2017.

16. BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015. This report indicates that for July 2014 – June 2015:
- (a) the rate of *alcohol related assault Police* incidents recorded by NSW Police recorded across The Hills Shire LGA was **3.7** per 100,000 persons, below the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of *alcohol related non-domestic violence* assault incidents recorded across The Hills Shire LGA was **38.9** per 100,000 persons, below the State-wide rate of **144.0** per 100,000 persons;
 - (c) the rate of *alcohol related domestic violence* assault incidents recorded across The Hills Shire LGA was **21.8** per 100,000 persons, below the State-wide rate of **122.6** per 100,000 persons; and
 - (d) the rate of *alcohol related offensive behaviour offences* recorded across The Hills Shire LGA was **8.5** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
17. BOCSAR Crime Maps based upon data from July 2015 – June 2016 detailing hotspots for the concentration of offences near the location of the Premises. This data, which is publicly available on the BOCSAR website, indicates the Premises is not located within a hotspot for incidents of *domestic assault*, incidents of *non-domestic assault* or for incidents of *malicious damage to property*.
18. LGNSW liquor licensing records indicating that the suburb of Kellyville currently has 6 packaged liquor licenced premises, while The Hills Shire LGA has 57 packaged liquor licenced premises.
19. ABS Socio Economic Index For Areas (SEIFA) data prepared on the basis of the 2011 census indicating that the suburb of Kellyville and The Hills Shire LGA are both ranked in the 10th decile, on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).