



Mr Grant Cusack
Hatzis Cusack Lawyers

gc@hatziscusack.com.au

24 August 2017

Dear Mr Cusack

APPLICATION NO: APP-0002512315
APPLICATION FOR: Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Wednesday 8:30am – 8:00pm
Thursday 8:30am – 9:00pm
Friday – Saturday 8:30am – 8:00pm
Sunday 10:00am – 8:00pm
APPLICANT: ALDI FOODS PTY LIMITED
PROPOSED LICENCE NAME: ALDI Griffith
PROPOSED LICENSED PREMISES: Lot 1/DP1169981 2-6 Oakes Road
GRIFFITH NSW 2680
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 GRIFFITH**

The Independent Liquor & Gaming Authority considered application number APP-0002512315 at its meeting on 19 July 2017 and, pursuant to section 45 of the *Liquor Act 2007*, decided to **refuse** the Application.

If you have any enquiries about this letter, please contact the case manager via email to beatrice.pitpaiaac@justice.nsw.gov.au.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford

Chairperson

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

STATEMENT OF REASONS

DECISION

1. On 20 December 2016, ALDI Foods Pty Limited (“the Applicant”) lodged an application for a packaged liquor licence for premises located at Lot 1/DP1169981 2-6 Oakes Road GRIFFITH NSW 2680 (“the Application”) with Liquor & Gaming NSW (“L&GNSW”) for determination by the Independent Liquor & Gaming Authority (“the Authority”).
2. Pursuant to section 45 of the *Liquor Act 2007* (“the Act”), the Authority decided to refuse the Application.
3. In making this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 29, 30, 31, 40, 45 and 48 of the Act, and the relevant provisions of the *Liquor Regulation 2008* (“the Regulation”).

MATERIAL CONSIDERED BY THE AUTHORITY

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

LEGISLATIVE FRAMEWORK

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

Objects of the Act

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

Trading hours

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

Minimum procedural requirements

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

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

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

Community impact statement

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

Provisions specific to packaged liquor licence

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

KEY FINDINGS

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

Validity, procedural and trading requirements

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

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

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

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

- (a) the Applicant is a fit and proper person to carry on the proposed business, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- (b) if the Application were to be granted, practices would be in place from the commencement of licensed trading at the Proposed Premises to ensure the responsible service of alcohol, having regard to the Applicant's Plan of Management ("POM") and the conditions to be imposed on the licence, and
- (c) the requisite DC is in force, based on the Notice of Determination of a Development Application No. 180/2015(1) issued by Griffith City Council on 8 December 2015.

Community impact statement

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

24. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Griffith, and the relevant "broader community" comprises Griffith 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 Griffith in the coming years. The Authority also accepts that the anticipated population growth will create further demand for packaged liquor.

26. The Authority accepts the Applicant's claim that the granting of the licence would provide an additional measure of convenience to customers of the ALDI Supermarket who wish to purchase liquor items along with their grocery items. This additional expediency can only be considered a modest benefit however, given that residents of Griffith can already access grocery and liquor products together at the existing Coles, Ritchies Supa IGA and Rossies supermarkets, each of which offers an associated packaged liquor facility.

27. The benefit of increased convenience is further reduced on the basis of the small size of the Proposed Premises. A smaller packaged liquor facility is less likely to carry a comprehensive range of liquor products, meaning that customers of the ALDI Supermarket might still prefer to shop at any one of the number of other packaged liquor facilities located in Griffith.

28. The Authority accepts the Applicant's submission that the Proposed Premises would sell a range of principally ALDI-branded liquor products which are not currently available

elsewhere in Griffith, however notes that the range of additional products to be offered is limited.

29. The Authority accepts that there is a significant degree of support for the proposal amongst customers of the existing ALDI Supermarket, as evidenced by the many signatures gathered in support of the Application.

Negative social impacts

30. The Authority notes the submissions received from NSW Police and a member of the local community in opposition to the Application. Both of these objections suggest that the existing availability of packaged liquor in the area is contributing to a variety of forms of alcohol-related harm being suffered by members of the local and broader communities.
31. The Authority notes from the BOCSAR data that, for the year ending March 2017, there are a number of low, medium and high density hotspots for alcohol-related assault, domestic assault, non-domestic assault and malicious damage to property in the vicinity of the Proposed Premises.
32. The Authority is also troubled by the very high rates of alcohol-related domestic assault, alcohol-related non-domestic assault and malicious damage to property for both Griffith suburb and LGA for the same period, all of which were well above corresponding NSW figures, indicating that a significant degree of alcohol-related harm is currently being experienced within the local and broader communities. Whilst the Authority accepts the Applicant's contention that there has been some reduction in rates of alcohol-related crime in recent years, it is of the view that such rates remain unacceptably high, particularly as these rates have exceeded the NSW average for the last four years.
33. The Authority accepts that both the local and broader communities have much higher than average rates per 100,000 of population of packaged liquor licences. The Authority is not persuaded by the Applicant's suggestion that a number of the existing packaged liquor licences in the area should not be included in density calculations due to being restricted operations, attached to wineries or not currently trading, as the same limitations also exist in respect of an unknown number of the many packaged liquor licences located across NSW, and are not accounted for in the calculation of the density of packaged liquor licences per 100,000 of the state's population.
34. Further to the above, even if the revised packaged liquor licence density figures for Griffith suburb and LGA were to be accepted, the Authority notes that these are still higher than the corresponding NSW figure.
35. The Authority accepts that data provided by NSW Health indicates that residents of Griffith LGA are experiencing alcohol-related health issues at a higher than average rate.
36. The Authority notes the extensive submission provided by the Applicant in response to the objections received by L&GNSW, which includes evidence of substantial local support for the Application, however, on balance, remains concerned by the rates of relevant offences and liquor licence density in the suburb and LGA.
37. The Authority acknowledges that it is likely that any liquor that were to be sold or supplied at the Proposed Premises would contribute to the prevailing concerning levels of alcohol-related crime in the local community.
38. The Authority has had regard to the ABS data indicating that, as at 2011, Griffith was relatively disadvantaged in comparison with other suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage, ranking in the 3rd decile.
39. The Authority is not satisfied that this risk would be adequately mitigated by the imposition of special licence conditions or by the Applicant's adherence to the "Management Policies and Strategies" and "House Policy" documents lodged with the Application.

Overall social impact

40. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is not satisfied that the overall social impact of granting the licence would not be detrimental to the well-being of the local and broader communities.
41. Furthermore, the Authority is not satisfied that a decision to grant the licence would be consistent with the objects of the Act to regulate the supply of liquor and facilitate the responsible development of the liquor industry in line with community expectations and needs.
42. Accordingly, the Authority has decided to refuse the Application.



Philip Crawford
Chairperson

Important Information:

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

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

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

SCHEDULE

1. ABS SEIFA data based on the 2011 Census indicating that Griffith suburb ranked in the 3rd decile compared to other suburbs in NSW, and Griffith LGA ranked in the 5th decile compared to other local government areas in NSW, on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data relating to alcohol attributable deaths by local government area, Griffith LGA, NSW 2001-2002 to 2012-2013, indicating that the Smoothed Estimate of Standardised Mortality Ratio was 103.40 for the period 2012-2013.
3. HealthStats NSW data relating to alcohol attributable hospitalisations by local government area, Griffith LGA, NSW 2001-2003 to 2013-2015 indicating that the Smoothed Estimate of Standardised Separation Ratio was 107.10 for the period 2013-2015.
4. Notice of Determination of a Development Application No. 180/2015(1) issued by Griffith City Council on 8 December 2015, approving the construction of a shop (Supermarket), associated carpark and shade structures, landscaping, loading dock and business identification signage.
5. A letter to the Applicant from Roads & Maritime dated 2 June 2016, making a number of recommendations to the Applicant.
6. An email to the Applicant from Aboriginal Affairs on 23 June 2016, advising that it has no objection to the proposal on that basis that the Applicant has also notified the NSW and Local Aboriginal Land Councils.
7. An email to the Applicant from Griffith City Council on 23 June 2016, advising that Council believes that a Section 96 modification application is required in order that the ALDI Supermarket be utilised for the sale of liquor.
8. An email to the Applicant from NSW Police on 29 June 2016, identifying “potential harms the proposed application may have on the Griffith community”.
9. ASIC Current Organisation Extracts for ALDI FOODS PTY LIMITED ACN 086 210 139 and ALDI PTY LTD ACN 086 493 950, dated 20 October 2016.
10. CIS Category B dated 10 December 2016, with accompanying document titled “Additional Information – Application and Community Impact Statement”, detailing the circumstances surrounding the Application, including the following:
 - the proposal is for a very small packaged liquor facility within an ALDI Supermarket;
 - many of the existing packaged liquor licences in Griffith LGA comprise restricted operations or are not trading, and none of Griffith’s hotels or clubs include a dedicated liquor store area;

- the proposal offers a number of benefits to the local and broader communities including additional choice, convenience, competitive pricing and reduced escape expenditure, amongst other things; and
 - NSW Police raised concerns about the proposal during the CIS consultation process.
11. Application form for a packaged liquor licence, lodged 20 December 2016, accompanied by the following documents:
 - “Additional Information – 6-Hour Closure Period”, seeking a 6-hour closure period of 2:30am – 8:30am on the basis that customers of the ALDI Supermarket would prefer to be able to purchase liquor items at the same time as purchasing grocery items, including between the hours of 8:30am (when the ALDI Supermarket opens for business) and 10:00am;
 - “Conditions Consented To By The Applicant Being Endorsed On The Licence”, proposing the imposition of a number of conditions, including a condition restricting the Applicant from selling refrigerated liquor products;
 - “Management Policies and Strategies – ALDI Liquor – NSW”; and
 - “ALDI Liquor – NSW – House Policy”.
 12. Plan of the proposed licensed area lodged with the Application on 20 December 2016.
 13. An email from L&GNSW Compliance Operations attaching the EVAT Assessment Report, advising that L&GNSW does not intend to carry out any further assessment of the Application, dated 5 January 2017.
 14. A submission from a resident of Griffith lodged on 20 January 2017, objecting to the Application on the basis of various concerns, including the following:
 - the local community is already suffering from various forms of alcohol-related harm;
 - the troubling rates of alcohol-related crime in the local community and the location of BOCSAR hotspots close to the Proposed Premises;
 - Griffith City Council’s Crime Prevention Strategy identifies widespread alcohol abuse in Griffith LGA;
 - demographic markers indicate a disadvantaged community vulnerable to alcohol-related harms; and
 - the high density of liquor licences in Griffith.
 15. A submission from Griffith City Council emailed to L&GNSW on 7 February 2017, advising that it granted development consent for the construction of a shop, and use as a supermarket, on 8 December 2015.
 16. A submission from NSW Police emailed to L&GNSW on 9 February 2017, advising that NSW Police objects to the granting of the Application on the basis of various concerns, including the following:
 - the high density of packaged liquor outlets in Griffith;
 - rates of alcohol-related domestic assault in Griffith and evidence that the consumption of alcohol in the home is a contributing factor to such incidents; and

- pre-loading and the availability of low-priced liquor products.
17. BOCSAR Crime Hotspot Maps for the year ending March 2017.
 18. NSW crime statistics for the year ending March 2017, published by BOCSAR. This data indicates that:
 - the rate of alcohol-related domestic assault incidents recorded by NSW Police for Griffith suburb was 242.6 per 100,000 persons, and Griffith LGA, 219.3, well above the State-wide rate of 114.7 per 100,000 persons;
 - the rate of alcohol-related non-domestic assault incidents recorded by NSW Police for Griffith suburb was 253.4 per 100,000 persons, and Griffith LGA, 192.4, well above the State-wide rate of 133.9 per 100,000 persons; and
 - the rate of malicious damage to property incidents recorded by NSW Police for Griffith suburb was 1541.7 per 100,000 persons, and Griffith LGA, 1154.5, well above the State-wide rate of 816.4 per 100,000 persons.
 19. Certification of Advertising Application signed by Mr Grant Cusack, dated 7 June 2017.
 20. "Submission in Response to Assessment of Application" from Grant Cusack and Tony Hatzis to L&GNSW dated 7 June 2017, attaching a petition featuring 932 signatures in support of the Application and including the following responses to concerns raised by submitters:
 - there has been a consistent downward trend in rates of alcohol-related domestic assault in Griffith suburb over the last five years;
 - a number of the demographic markers typically associated with populations vulnerable to domestic assault are not particularly prevalent in Griffith suburb;
 - from December 2011 to December 2016 alcohol related assaults in Griffith LGA have reduced by 8.5% per year; and
 - within a competitive marketplace such as Griffith, the Proposed Premises is inherently unlikely to drive down pricing.
 21. Liquor licensing records from L&GNSW as at June 2017 indicating:
 - Griffith suburb had 13 packaged liquor licences, equivalent to 71.44 packaged liquor licences per 100,000 of population;
 - Griffith LGA had 18 packaged liquor licences, equivalent to 70.20 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.
 22. Google maps indicating the location of the Proposed Premises, extracted on 26 June 2017.