

DECISION OF DIRECTOR OF LIQUOR LICENSING

FIRST APPLICANT: WOOLWORTHS LIMITED

PREMISES: BWS - BEER WINE SPIRITS HARRISDALE

PREMISES ADDRESS: HARRISDALE SHOPPING CENTRE, CORNER
NICHOLSON ROAD AND YELLOWWOOD AVENUE,
HARRISDLAE

APPLICATION ID: A000183623

SECOND APPLICANT: ALDI FOODS PTY LTD

PREMISES ADDRESS: HARRISDALE SHOPPING CENTRE, CORNER
NICHOLSON ROAD AND YELLOWWOOD AVENUE,
HARRISDALE

APPLICATION ID: A000187300

NATURE OF APPLICATIONS: CONDITIONAL GRANT OF A LIQUOR STORE LICENCE

DATE OF DETERMINATION: 11 MAY 2016

Introduction

- 1 On 23 July 2015, an application was lodged by Woolworths Limited (Woolworths) for the conditional grant of a liquor store licence for premises to be known as BWS – Beer Wine Spirits Harrisdale and located at The Harrisdale Shopping Centre (the Shopping Centre), corner Nicholson Road and Yellowwood Avenue, Harrisdale (the Woolworths application).
- 2 The application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. There were no objections or intervention to the grant of the application.
- 3 On 23 September 2015, an application was lodged by ALDI Foods Pty Ltd (ALDI) for the conditional grant of a liquor store licence for premises to be known as ALDI Harrisdale Liquor Store and located at the Shopping Centre (the ALDI application).
- 4 That application was advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing. An objection, pursuant to ss 73 and 74 of the *Liquor Control Act 1988* (the Act), was lodged by the McCusker Centre for Action on Alcohol and Youth (MCAAY) while Notices of Intervention, pursuant to s 69 of the Act, were lodged by the Executive Director Public Health (EDPH) and the Commissioner of Police (the Commissioner).
- 5 Each application was made pursuant to ss 47 and 62 of the Act.

- 6 On the basis that these two applications are for premises in close proximity to each other, I determined that they are competing applications which would be heard together. Therefore, pursuant to s 16(12) of the Act, the evidence relating to one of them is evidence relating to the other.
- 7 The applications will be determined on the written material lodged by the parties as permitted under ss 13 and 16 of the Act. The evidence and submissions of the parties are briefly summarised as follows.

The Woolworths application

- 8 Woolworths seeks to establish a standalone liquor store adjacent to a Woolworths supermarket in the newly developed Shopping Centre in Harrisdale. The proposed liquor store is a convenience style outlet designed to meet the requirements of consumers who want the convenience of being able to purchase their packaged liquor at the same time as other shopping at the Shopping Centre.
- 9 The proposed liquor store will comprise an area of 188m², which will include 142m² of trading floor and a walk in cool room of 46m². The standard BWS product range, services and facilities will be offered at the proposed premises which will include both local, Australian and imported (international) products and consist of approximately 1,830 items, including:
 - 251 beer products;
 - 909 wine products;
 - 463 bottled spirit products and 'Ready to Drink' products; and
 - 207 sundry items such as snacks accessories etc.
- 10 It was submitted that of the above product range, around 15% will be products exclusive to the applicant. A large range of local and WA products, particularly wine, will also be offered to ensure the local market is catered for to provide a good representation of local product. According to Woolworths, it is a proud supporter of the "Buy West, Eat Best" program which has been specifically set up to support the local community in Western Australia and emphasis will be given to the ranging and support of local products.
- 11 Woolworths submitted a Public Interest Assessment (Woolworths PIA) which included a Health and Environment Report prepared by Caporn Services (the Caporn report), a report on the surrounding locality, demographics, amenity and character prepared by Hames Sharley (WA) Pty Ltd (the Hames Sharley report) and a market survey conducted by West Coast Field Services (the Woolworths market survey).
- 12 The Woolworths' market survey revealed that 79% of respondents believe they will use the Shopping Centre and 65% of respondents think the establishment of the BWS

liquor store at the Shopping Centre is a good idea, with convenient location being the main reason for this response.

The ALDI application

- 13 ALDI proposes to establish a small browse/display area of approximately 24m² within its new supermarket at the Shopping Centre. According to ALDI, it proposes to supplement its supermarket services and facilities with a take-away liquor service so as to create a one-stop shopping convenience for its customers. The licensed area will take the shape of a simple square and the displays will form a U shape at the front of the store near the checkouts. Although the browse/display area is quite small, according to the ALDI, it does not diminish the convenience and quality of offer to the public. ALDI propose to install a non-transparent partition at the front of the browse/display area which faces out from the supermarket and a Wanzi swing/gate at the end of the licensed checkout.
- 14 ALDI submitted that its proposed range of liquor products will be a carefully selected value for money range of approximately 95 items, which will include some ALDI exclusive products, made-to order for ALDI stores. There will be no coolroom or other refrigeration in the liquor area, with all products being stocked and sold at room temperature. The product offering will consist of:
- 60 wines;
 - 16 different beers;
 - 15 different spirits; and
 - 4 ciders.
- 15 ALDI's Public Interest Assessment (ALDI PIA), submitted to support its application, included information on the proposed manner of trade, demographic profile of the local community and included a survey of consumer requirements undertaken by Patterson Research Group (the Patterson report). The Patterson report indicated that 93% of respondents are at least quite likely to shop in the ALDI store with relatively strong support for the establishment of the proposed liquor store, with convenience being a driving factor.

Common evidence relating to the locality and the Shopping Centre

- 16 Both Woolworths and ALDI provided information on the development of the Shopping Centre and the demographic profile of the local community.
- 17 it was submitted that Harrisdale is a new and developing suburb, situated approximately 24km from Perth within the City of Armadale. The locality surrounding the proposed liquor store comprises the suburbs of Harrisdale and Piara Waters and parts of the suburbs of Forrestdale, Canning Vale and Banjup.

- 18 The Shopping Centre is a planned centre, designed to meet the daily and weekly shopping needs of the existing and new residents of the local community. The Shopping Centre is being developed in stages, and will initially include a Woolworths supermarket, ALDI supermarket, around 30 specialty stores, five retail kiosks and over 500 parking bays. The Shopping Centre will form part of the Newhaven District Activity Centre.
- 19 According to the Hames Sharley report:
- “... the locality is likely to experience an exponential growth rate of 308% between the years 2011 and 2031. Of this anticipated growth, much occurs in the suburbs of Harrisdale (8,245 or 216%) and Piara Waters (14,118 or 545%) which are the areas where local residents are most likely to service the proposed store.”*
- “The area comprising the locality is anticipated to accommodate much of the population growth in the City of Armadale as it is one of the major greenfield development areas within the City.”*
- 20 An analysis of the demographics indicates that the locality is enjoying a positive state of socio-economic health with unemployment rates below the State rate, median family incomes above the State rate and there is no over representation of at-risk groups within the locality. Although there is some crime in the area, total crime per capita has remained below the State levels over the past three years.
- 21 In respect of the existing packaged liquor outlets in the locality, the following were identified:
- Liquor Barons Forrestdale, a large “box” style drive through outlet approximately 2.2km from the Shopping Centre;
 - Liquorland Southern River, a convenience style store that forms part of the Southern River Shopping Centre, approximately 3.2km away; and
 - The C.Y. O’Connor Pub, a tavern with a drive through bottleshop approximately 1.8km away.

The objector’s evidence and submissions

- 22 MCAAY objected to the application lodged by ALDI on the basis that the grant of this application would not be in the public interest.
- 23 MCAAY is not opposed to a liquor store being opened in the area; however, it is concerned about the proposed placement and layout of the ALDI Harrisdale liquor store within a supermarket and next to groceries. In this regard, MCAAY is concerned that the integration of a liquor store within a supermarket would contribute to the normalisation of alcohol through the treatment of alcohol as a normal grocery item. According to MCAAY, alcohol is not an ordinary commodity and the sale and use of

alcohol comes at an enormous cost to society. MCAAY also submitted that alcohol is an inherently risky product with the potential to cause significant short and long term harms to drinkers and others, and deserves to be treated differently to other consumer products. Alcohol abuse costs the Australian community an estimated \$14.325 billion annually.

- 24 It was further submitted by MCAAY that supermarkets are places children and young people are likely to visit with or without their parents, and the layout of the proposed ALDI store means that children will be exposed to the sale and promotion of alcohol in places where they would not normally see it. Research shows that alcohol promotion shapes young people's attitudes and behaviours, and contributes to the normalisation of alcohol use.
- 25 MCAAY maintains that the current situation in Western Australia where liquor stores are separate from the supermarkets, with their own registers and entry points should be maintained and the ALDI model will set an undesirable precedent leading to increased alcohol consumption and harm in the community. This is of greater concern given that ALDI intends to sell extremely low-priced alcohol at its stores. Packaged liquor is a significant contributor to harm in the community and packaged outlet density is positively correlated with rates of assaults, domestic violence, chronic disease and very heavy episodic drinking.

The interveners' evidence and submissions

The Executive Director Public health

- 26 The EDPH intervened in the ALDI application to make representations regarding the risk of alcohol-related harm or ill-health that may result if the application is granted. The grounds of the intervention were based on the following:
- the association of the sale of packaged liquor with general supermarket goods can reinforce alcohol as a non-harmful product, and establish its cultural place as part of everyday life, shaping attitudes and behaviours towards alcohol;
 - the association of alcohol products with everyday grocery items can lead to increased consumption and harm;
 - there is a relationship between price, consumption and harm, and ALDI Harrisdale intends to provide the public with low priced products; and
 - if the application is granted, conditions that separate the alcohol from general grocery items would be an important harm minimisation approach.
- 27 According to the EDPH, the integration of alcohol browsing and sales within the ALDI supermarket raises concerns regarding the potential for harm and ill-health to occur. Unlike separate, dedicated liquor outlets, supermarkets are generally frequented by a larger and broader proportion of the population (including children) because of the

daily 'need' type products for sale. ALDI's business model increases the potential reach of alcohol-related harm given the wider community exposure to the sale and promotion of alcohol in a setting and manner that would not normally occur. ALDI also proposes to offer a range of very cheap liquor, with many wine products under \$5.00 a bottle and some as low as \$2.79. There is a strong relationship between price, consumption and harm in the community and packaged liquor sales are linked to alcohol-related harm and ill-health. Research indicates that limiting the sale of alcohol from within supermarkets is an important harm minimisation strategy.

28 The EDPH also submitted that the ability to purchase alcohol alongside general grocery items could encourage impulse or unplanned purchasing; that is, as a result of convenience and 'visual reminders', there is increased potential for customers of the ALDI Harrisdale Liquor Store to purchase alcohol when they would otherwise not have been considering such purchases. Studies have indicated that 44% of alcohol purchases are unplanned and impulse purchasing can lead to increased consumption, which in turn can lead to increased harm. Representations were also made that:

- it is relevant to bear in mind that not all harm associated with packaged liquor occurs immediately after purchase, but may occur at a later time or place; and
- research indicates that alcohol sales made by liquor stores were closely and positively related to levels of assault, road crashes, breath alcohol levels of drink-drivers and alcohol-attributable hospitalisations.

29 Consequently, in view of the risks associated with the grant of the ALDI application, the EDPH recommended various conditions that could be imposed on the licence to minimise those risks.

The Commissioner of Police

30 The Commissioner intervened in the ALDI application because of the risks associated with the grant of the application. To minimise those risks, the Commissioner recommended various conditions that will assist to minimise the consequential harms and anti-social behaviours attributed to a licensed premises and ensure ALDI trades in the manner set out in its PIA.

31 It was submitted by the Commissioner that there are three existing packaged liquor outlets in the locality together with a proposed new liquor store by Woolworths at the same shopping centre. Police data indicates that between 1 January 2014 and 31 December 2014, there were 609 incidents in the locality of which 18 were alcohol-related and between 1 January 2015 and 16 October 2015 the number of recorded incidents had increased to 650, with 24 being alcohol-related. In 2014, 8 out of 29 domestic assaults were alcohol-related and in 2015 (to October), 7 out of 41 domestic assaults were alcohol-related.

32 The Commissioner acknowledged that reported offences within the locality are generally lower than surrounding suburbs, however, it was suggested by the

Commissioner that this could be attributed to the locality mainly comprising of new, developing suburbs and possibly because there are currently minimal licensed premises in the area. It was also observed by the Commissioner that the locality is amid the largest growing suburbs in greater Perth, and as such, as the population increases, so will the crime rate, which is already being reflected in crime statistics. Police calls from the public for assistance (CAD Incidents) in the locality indicate that:

- from January to December 2014 there were 69 domestic related incidents, 100 disturbances and public order incidents and 11 non-domestic assault incidents; and
- from January to September 2015 there were 127 domestic related incidents, 139 disturbance and public order incidents and 15 non-domestic assaults incidents.

33 The above data shows an increasing trend in calls for police assistance in the locality. According to the Commissioner, it should also be noted that the suburb of Harrisdale has reported quite a significant increase in calls from the public for police assistance. Although the CAD data does not specifically indicate whether alcohol was a contributing factor, it is known that alcohol is consistently a contributing factor in the incidents of the nature reported on. An article in the International Journal of Drug Policy (26 of 2015) stated that *“As the off-premise retail sector becomes an increasingly important part of the alcohol supply chain in Australia, its significant influence on alcoholic harms is being increasing confirmed through empirical research.”*

34 In terms of at-risk groups in the locality, the Commissioner noted that Australian Bureau of Statistics data shows the representation of children and young persons between the ages of fourteen and nineteen within the locality is higher than the State average.

35 Consequently, the Commissioner recommended that if the application for ALDI is granted, conditions should be imposed on the licence to mitigate the risks presented in the application.

Determination

36 There are two competing applications, one by Woolworths and one by ALDI, for the conditional grant of liquor store licences at the new Harrisdale Shopping Centre. The Shopping Centre is designed to meet the daily and weekly shopping needs of the growing and developing local community.

37 Woolworths proposes to establish a convenience style, standalone facility of approximately 188m², offering around 1,623 refrigerated and non-refrigerated liquor products. ALDI proposes to establish a small but discreet browse/display area of approximately 24m² within its new supermarket and will provide about 95 liquor products. There will be no refrigerated products on offer.

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- 38 There were no objections or interventions to the Woolworths application, however in respect of the ALDI application; there was an objection by MCAAY and interventions from the EDPH and the Commissioner.
- 39 An applicant for the grant of a liquor store licence must satisfy the licensing authority that the grant of the application is in the public interest (refer s 38(2) of the Act. An applicant must therefore adduce sufficient evidence to discharge this burden.
- 40 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O'Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 41 The burden of establishing the validity of any objection lies on the objector (s 73(10)), however, an intervener carries no onus to establish their assertions of fact or opinion (refer *Re Gull Liquor* (1999) 20 SR (WA) 321);
- 42 The factual matters which I am bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and secondary objects of the Act as set out in s 5 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).
- 43 The primary objects of the Act are:
- to regulate the sale, supply and consumption of liquor;
 - to minimise harm caused to people, or any group of people, due to the use of liquor; and
 - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- 44 The secondary objects of the Act are:
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
 - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

- 45 The licensing authority is also entitled (but not bound) to take into account the factual matters set out in s 38(4) of the Act as part of the public interest considerations.
- 46 Each application must be considered on its merits however, the licensing authority has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest. In *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384 EM Heenan J described the “absolute discretion” provided for under section 33(1) in the following terms:

The 'absolute discretion' to grant or refuse an application of (sic) any ground or for any reason that the Commission considers in the public interest, s 33(1), is an example of a very full and ample discretion which is only confined by the scope and purpose of the Act which in turn is to be determined by the express objects of the Act and the legislation read as a whole: Hermal Pty Ltd v Director of Liquor Licensing [2001] WASC 356 [6] - [7] (Wallwork J) and Palace Securities v Liquor Licensing (1992) 7 WAR 241, 249 - 250 (Malcolm CJ) and 263 (Wallwork J). Section 5(2) in requiring the licensing authority to have regard to the primary and secondary objects of the Act, which have already been mentioned, obliges the licensing authority to pay regard to those objects on any application but does not otherwise confine the scope or meaning of the public interest or make those objects the exclusive considerations nor the sole determinants of the public interest: Re Michael; Ex parte Epic Energy (WA) Nominees Pty Ltd [2002] WASC 231; (2002) 25 WAR 511, [52] - [55]; O'Sullivan v Farrer [1989] HCA 61; (1989) 168 CLR 210, 216 and Jericho Nominees Pty Ltd v Dileum Pty Ltd (1992) 6 WAR 380, 400.

- 47 There are factual issues relating to the locality which are common ground for both applications. These include:
- the locality surrounding the proposed liquor stores is a fast growing urban area, with the population doubling between 2009 and 2014;
 - the Shopping Centre will provide the retail core of a new district centre;
 - the locality is not experiencing alcohol-related social harms at rates higher than other areas, although police data indicates an increasing trend in crime and calls for police assistance;
 - in general, there is not an over representation of at-risk groups in the locality and the population of the locality is not relatively disadvantaged; and
 - the survey data submitted by each applicant reflects good public support for the establishment of a liquor outlet at the Shopping Centre, with convenience being a key driving factor for this support.

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- 48 In *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, Buss JA stated that it is a notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance, especially to working people, and that this social fact is reflected in the development of district and regional shopping centres. This notorious fact adds support to each applicant's proposal to establish a packaged liquor outlet in the Shopping Centre.
- 49 Ultimately, the question I must resolve is whether each applicant has discharged its onus under s 38(2) of the Act and then, whether in accordance with the discretion afforded the licensing authority under s 33(1), to grant one, both or none of the competing applications. In exercising this discretion, I must weigh and balance the competing interests of each application and make a determination on the balance of probabilities.
- 50 In my view, the evidence relating to the current and future growth of the locality, the development of the Shopping Centre, consumer demand surveys and the notorious fact of one-stop shopping referred to by Buss J in *Woolworths* supra, support a conclusion that it would be in the public interest to establish a packaged liquor outlet at this location and that this would be consistent with object 5(1)(c) of the Act.
- 51 Each applicant espoused the benefits of their application over the competing application.
- 52 Woolworths submitted that its proposal should be preferred because of the vastly superior range of product on offer and its proposed liquor store can be effectively and stringently controlled and supervised at all times and it isolates and differentiates liquor products from general grocery items. According to Woolworths, it recognises that liquor is not the same as any other grocery item, and cannot be treated as such.
- 53 Conversely, it was submitted by ALDI that the Woolworths liquor store will not provide the same stock or services and would not be able to cater for the one-stop shopping requirements of ALDI Harrisdale customers.
- 54 Although some ALDI liquor products will be locally sourced and unique to their stores, not all ALDI liquor products fall into this category and therefore I am of the view that this benefit to the community is modest. In this regard, I note that Woolworths will also provide a range of locally sourced products. More importantly however, ALDI's approach to the concept of one-stop shopping appears to be misconceived and inconsistent with the words of Buss J in *Woolworths* supra and decisions of the Liquor Commission.
- 55 Providing liquor ancillary to grocery products does not in itself constitute one-stop shopping. In *Liquorland (Australia) Pty Ltd v Commissioner of Police and Director of Liquor Licensing* (LC 18/2015) the Liquor Commission stated "*The ability to undertake 'one-stop' shopping, if there is a significant requirement for such a service.....does not mean the ability to combine one-trolley liquor and grocery purchases.*"

56 In addition, in *Woolworths (WA) Ltd v Liquorland (Australia) Pty Ltd & Ors*, unreported, FCt SCt of WA; Library No 940553; 7 October 1994, it was held that the Liquor Licensing Court had not erred in refusing the grant of a licence to an applicant for a liquor store licence proposed to be located in a shopping centre, although there was no other liquor store under the roof of that shopping centre. In that case, the evidence was that there was an existing packaged liquor outlet very near to the supermarket. The existing outlet and the supermarket were separated by a parking area which served them both. It was submitted by the applicant in that case that a desire for one-stop shopping was now accepted as being objectively reasonable and therefore, every supermarket should have a liquor store. However, Malcolm CJ, Rowland J and Anderson JJ held that the Liquor Licensing Court Judge had not erred in finding as a fact that, in view of the presence of the existing outlet so close to the supermarket as to almost be part of the shopping centre, any subjective requirement of the relevant section of the public for a liquor store to be located within the supermarket was not objectively reasonable. It was held that although the tavern was not under the main roof of the Shopping Centre complex, it was properly regarded as being sufficiently adjacent to service the requirement of “one-stop shopping”.

57 The regulatory scheme and objects of the Act does not support the contention that every supermarket must have a related liquor store. One-stop shopping does not mean simply combining liquor and grocery purchases and the private commercial interest of applicants does not necessarily coincide with the public interest. Further, in LC 18/2015 the Liquor Commission stated:

A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission’s view, in accordance with the provisions and intent of the Act.

58 Catering to the requirements of consumers under object 5(1)(c) of the Act must be considered in the context of the proper development of the liquor industry and the broader public interest considerations.

59 In this regard, I note the comments of the Liquor Commission in LC 21/2015 where it stated:

“If convenience was seen to be meeting the “public interest” requirement, then the weight to be accorded to that factor would also need to be reviewed in the context of the proper development of the liquor industry. In that respect, the provision of liquor products in supermarkets, delicatessens, butchers, or other retail outlets where grocery items are purchased regularly, and at which it would merely be convenient to buy liquor, is viewed by the Commission as not being a sufficient reason to grant an application for a liquor store licence.”

60 Further, Heenan J in *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384, said:

“Whether any particular licence application will or will not contribute to the proper development of the liquor industry or whether it will facilitate the use and development of premises in a manner which reflects the diversity of the requirements of consumers in this State are questions of fact, degree and value judgement..... I have previously concluded that the primary objects of the act set out in s 5(1)(c) are not the only or the exclusive objects of the Act and, except to the extent of any inconsistency, do not restrict considerations of the public interest required by s 33(1) or s 38(2).

Because the appellant has emphasised the potential significance of the primary objects of the Act set out in s 5(1)(c), it is necessary to observe that another primary object specified by s 5(1)(a) is to regulate the sale, supply and consumption of liquor and that this statutory policy of regulation is entirely consistent with the measured approach to what may be regarded as contributing to the proper development of the liquor industry and to the facilitation of the use and development of licensed premises to reflect the diversity of requirements in this State. These considerations are inextricably linked with the public interest and cannot be properly addressed or applied without regard to it.”

61 In respect of the harm minimisation object of the Act, although crime and offending in the locality is low compared to surrounding suburbs, I accept the Commissioner’s contention that this is because the locality is a new developing area. As the population increases, so will levels of offending. This is already highlighted by police data for 2014 compared to 2015 which reflects increased offending and calls for police assistance.

62 Consequently, I am of the view that whilst it would be in the public interest to establish a liquor store within the Shopping Centre it is neither necessary or desirable for two packaged liquor outlets to operate at the Shopping Centre in order to cater to residents of the locality and their requirements for access to packaged liquor. I arrive at this conclusion for a number of reasons:

- first, it has been held by the Court of Appeal that one packaged liquor outlet in a shopping centre is sufficient to cater for the requirements of the public for one-stop shopping convenience (refer *Woolworths (WA) Ltd v Liquorland (Australia) Pty Ltd*);
- secondly, the proliferation of liquor outlets would not be consistent with the public interest or the objects of the Act (refer *Parliamentary Debates, WA Parliament, vol 409, p 6342*);

- thirdly, this measured approach is consistent with the statutory policy of regulation under object 5(1)(a) of the Act; and
- fourthly, there is some evidence of an increasing trend in offending and calls for police assistance and therefore restricting the density of outlets in the Shopping Centre would be consistent with the harm minimisation object of the Act.

63 Therefore, I must weigh and balance the public benefits of each application to decide which application should be approved.

64 In conducting that exercise, I have concluded that the Woolworths application will provide greater benefits to consumers in the locality because:

- the proposed Woolworths liquor store is considerably larger and will provide a greater range of services to the local community. ALDI will offer 95 liquor products whereas Woolworths will provide 1,623 different liquor products, including refrigerated products;
- Woolworths will provide a greater variety of products at various price points, whereas the majority of ALDI products are at the lower price point;
- Woolworths will have staff within the liquor store to provide advice and assistance to customers and will provide sampling of products;
- the Woolworths liquor store will provide for one-stop shopping convenience for people using the Shopping Centre, whereas ALDI is essentially only catering to customers who use the ALDI supermarket;
- the Woolworths store is purposively separated and delineated from the general supermarket area. Although there is a degree of segregation between the liquor area and grocery items in the ALDI store, the ALDI proposal does introduce a greater level of integration of alcohol within general grocery items. ALDI stated in its submissions that it seeks to supplement its supermarket services and facilities with a take-away liquor service. In terms of the harm minimisation object of the Act, this is perceived as a negative when compared to the Woolworth proposal of providing a separate, standalone facility, albeit adjacent to a Woolworths supermarket; and
- there is evidence from MCAAY and the EDPH concerning the link between the availability of liquor in a supermarket environment and increased alcohol-related harm in the community and the availability of low priced liquor and increased harm. A large percentage of ALDI liquor products are at the lower end of the price scale (i.e. 22 wine varieties are listed at a price below \$5.00 a bottle, with three priced at \$2.79 and 48% of wine products are priced at less than \$10.00 a bottle). In comparing the risks associated with each application, the ALDI application poses a greater risk from a broad public health perspective. The evidence adduced by the objector and interveners, which must be considered in the context

of both applications, is nonetheless factually directed towards ALDI's proposed manner of trade.

65 Therefore, in the exercise of my discretion under s 33(1) of the Act, the application by Woolworths is granted and the application by ALDI is refused.

66 The grant of the Woolworths application is subject to the following:

- (a) a Certificate under s 39 of the Act being lodged before the operation of the licence;
- (b) compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premises;
- (c) all work being completed within 12 months in accordance with the plans and specifications dated 23 July 2015.
- (d) the recommendations of the Inspector of Licensed Premises on the Schedule of Requirements being satisfactorily completed and the Director of Liquor Licensing being notified in writing at least 21 days prior to applicant wishing to trade under the licence;
- (e) a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- (f) the applicant seeking confirmation of the grant on or before **10 May 2017** pursuant to s 62(4)(c) of the Act.

Conditions to be imposed on the issue of the licence

Trading hours

The permitted trading hours are those prescribed in s 98D of the Act.

Trading

The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.

CCTV

The licensee is to have and maintain a CCTV system in accordance with the policies of the Director of Liquor Licensing.

Approval under s 104

The application for approval of arrangement or agreement lodged on 23 July 2015 between Woolworths and Stockland Group is approved.

Tasting condition

Pursuant to s 47(2) of the Act, the licensee is authorised to supply liquor, by way of free sample, for consumption within the licensed premises, subject to the following conditions:

- (a) Tastings must be conducted under the full responsibility and supervision of the licensee or approved manager at all times.
- (b) Tastings cannot be supplied to juveniles.
- (c) Glasses to be used for tastings are to be washed in accordance with the provisions of the Standards of Licensed Premises Policy of the Director of Liquor Licensing unless single use disposable containers are used.
- (d) Compliance with the Food Act 2008 at all times.
- (e) Tastings per sample must not exceed the following measures:
 - (i) Wine – 50 mls
 - (ii) Beer – 100 mls
 - (iii) Spirits – 15 mls.
- (f) Free drinking water must be made available at all times that samples of liquor are available for tasting.

Compliance With Harm Minimisation Policy

The licensee has lodged a copy of the House Management Policy, Code of Conduct and Management Plan developed for these premises in accordance with the Harm Minimisation Policy. These documents must be retained on the licensed premises and produced to any Authorised Officer if required.

- 67 Pursuant to s 127(2) of the Act, the prescribed licence fee will be payable prior to the operation of the licence.
- 68 The applicant is reminded that trading **may not** commence without the prior written approval of the licensing authority.
- 69 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
- 70 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING