

**Liquor Commission of Western Australia
(*Liquor Control Act 1988*)**

Applicant:	Fiorita Pty Ltd (<i>represented by Mr Mario Sequeira Hospitality Total Services (Aus) Pty Ltd</i>)
Respondent:	Director of Liquor Licensing (<i>represented by Ms Rebekah Cook of the State Solicitor's Office</i>)
Commission:	Mr Nicholas van Hattem (Deputy Chairperson) Mr Jared Brotherston (Member) Mr Tony Di Francesco (Member)
Matter:	Application pursuant to section 25 of the <i>Liquor Control Act 1988</i> (the "Act") for review of the decision of the Director of Liquor Licensing to refuse an application to vary the trading conditions of a tavern licence in respect of premises known as Fiorita Wine and Bar.
Premises:	Fiorita Wine and Bar Suite 1 & 2 Building 2 The Quarter, 20 Sharpe Avenue, Karratha WA 6714
Date of Lodgement:	14 January 2025
Date of Hearing:	19 June 2025
Date of Determination:	8 June 2026
Determination:	The Application is refused and the decision of the Director of Liquor Licensing is affirmed.

Authorities referred to in determination

- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017).
- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Commissioner of Police v Liquor Commission of Western Australia* [2019] WASC 165
- *Executive Director of Health v Lily Creek International Pty Ltd* [2000] WASCA 258
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356
- *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70
- *Sunseasons Pty Ltd v Director of Liquor Licensing* (LC 21/2019)

BACKGROUND

1. An application (Application) was made by Fiorita Pty Ltd (the Applicant), pursuant to sections 64 and 68 of the *Liquor Control Act 1988* (the Act), seeking to vary the conditions of its tavern licence in respect of Fiorita Wine Bar & Restaurant, Karratha. The premises is subject to Pilbara-wide section 64 packaged liquor restrictions and additional licence-specific conditions.
2. The Application sought to add a condition providing that volume restrictions, price restrictions and prohibitions on spirits and ready-to-drink (RTD) beverages would not apply where liquor was pre-ordered at least 72 hours prior to sale or delivery. If approved, the condition would affect multiple existing restrictions governing packaged liquor sales for consumption off the premises.
3. The effect of the proposed condition would be to relax the volume and price limitations applicable to takeaway liquor, permit the sale of spirits and RTDs for takeaway purposes, and materially impact the operation of the Pilbara-wide section 64 restrictions and further restrictive conditions imposed on the licence.
4. In support of the Application, the Applicant lodged a public interest assessment and accompanying material, including supporting documents, statements from three local sporting clubs, a letter from the Karratha & Districts Chamber of Commerce and Industry, and a consumer petition containing 141 signatures.
5. The Application was advertised for a period of 14 days and referred to a broad range of stakeholders, including WA Police, the Executive Director of Public Health, health and treatment providers, schools, childcare centres and Aboriginal organisations within a three-kilometre radius of the premises. The Application was also notified to parties who had objected to the original grant of the tavern licence in 2016. No objections or interventions were received.
6. Following assessment, the General Manager Liquor Control and Arbitration, as Delegate of the Director of Liquor Licensing (the Director), wrote to the Applicant on 2 February 2023 indicating a preparedness to vary the licence conditions in respect of volume restrictions for packaged beer, cider and wine sold on a pre-ordered basis. However, the Delegate was not persuaded that it was in the public interest to vary the minimum price condition or to permit the sale of spirits and RTDs for takeaway purposes.
7. In that correspondence, the Director noted that the public interest assessment submitted with the original 2016 application identified harm minimisation strategies that included minimum pricing and the exclusion of spirits and RTDs from takeaway sales, and that packaged liquor was intended to complement takeaway food rather than form a central component of the business model.
8. The Applicant did not accept the partial variation proposed and maintained its Application in full. In considering the material before him, the Director acknowledged the Applicant's submissions concerning consumer demand, the bespoke and high-quality nature of the liquor products offered, and the assertion that advance ordering would prevent impulse purchasing.
9. The Director also acknowledged the Applicant's submissions regarding its compliance history, training and management practices, and the contention that existing licence conditions prevent local organisations from accessing sufficient volumes of packaged liquor not otherwise available in Karratha.

10. However, the Director concluded that the Applicant's public interest assessment and supporting submissions contained sweeping and largely unsubstantiated claims that the Application would be in the public interest and would not result in harm or ill-health. The assessment of potential harm was found to be limited in scope and relied heavily on the 72-hour pre-order requirement as a control measure.
11. It was further noted that the submissions focused primarily on organised events and functions and did not adequately consider the broader community impact of the proposed variation. In particular, approval of the Application would allow any member of the community not on the banned drinkers register to make bulk purchases on a frequent basis, regardless of whether a function or event was planned.
12. The Director considered that granting the Application would have the potential to significantly alter the availability of packaged liquor in Karratha and undermine existing harm minimisation measures that had been implemented in response to elevated levels of alcohol-related harm in the Pilbara.
13. The historical context of the Pilbara section 64 restrictions was considered, including the 2012 "show cause" process initiated following reports from WA Police and the West Pilbara Alcohol Management Group, which led to the imposition of restrictive conditions to address high rates of alcohol-related harm in the region.
14. The Director also had regard to a further inquiry conducted between 2020 and 2022, which concluded that the existing liquor restrictions, together with initiatives such as the banned drinkers register, liquor restricted areas and carriage limits, were effectively minimising harm from the use of liquor in the Pilbara.
15. Particular emphasis was placed on container size restrictions, which remain a key component of the harm minimisation framework in Karratha. These include prohibitions on beer in glass bottles of 750 millilitres or more, liquor in containers exceeding two litres with an alcohol content of six per cent or more, and fortified wine in containers greater than one litre.
16. After weighing the evidence, the Director concluded that the Applicant had not discharged the onus under section 38 of the Act demonstrating that granting the Application would be in the public interest.
17. In undertaking the required balancing exercise between the primary object of minimising alcohol-related harm under section 5(1)(b) and other objects of the Act, including catering for consumer requirements under section 5(1)(c), the Director determined that the potential for increased harm outweighed the competing considerations and on that basis, the Application to vary the licence conditions was refused.

THE REVIEW

18. On 7 January 2025 the Applicant applied for a review of the Decision, pursuant to section 25 of the Act. The Applicant submitted that the Director:
 - a) failed to give appropriate weight to the cogent evidence provided with the Application;
 - b) erred in interpreting the Pilbara Section 64 restrictions applicable for Karratha; and
 - c) gave too much weight to Section 5(1)(b) of the Act based on incorrect assumptions and failed to consider approving the Application in the public interest.

Submissions from the Applicant

19. The Applicant seeks review under section 25 of the Act of the Director's decision dated 16 December 2024 refusing an Application to vary licence conditions relating to packaged liquor sales at Fiorita Wine Bar & Restaurant, Karratha.
20. The Liquor Commission is empowered under section 25(2) to affirm, vary or quash the decision and to exercise the functions of the Director. In accordance with section 25(2c) of the Act, the Commission's review is confined to the material before the Director at the time the decision was made. These submissions do not introduce new evidence but summarise, clarify and respond to matters arising from that material, including the Director's further submissions.
21. The proposed variation is narrow and precisely defined. It seeks to permit exemptions from volume limits, minimum price requirements and restrictions on spirits and RTDs only where liquor is pre-ordered at least 72 hours prior to sale or delivery. The variation does not seek to remove or weaken container size restrictions, alcohol strength limits, or prohibited product categories applying to Karratha under section 64.
22. General takeaway liquor sales would remain fully subject to all existing licence conditions and Pilbara-wide restrictions. The proposed condition applies only to structured, pre-planned transactions and operates entirely outside casual or impulsive retail trade.
23. The statutory framework requires a balancing exercise. Section 38(2) places the onus on the Applicant to demonstrate that the variation is in the public interest. Section 5(1)(b) identifies harm minimisation as a primary object of the Act, while section 5(1)(c) expressly requires consideration of consumer requirements and the proper development of the liquor and hospitality industries. The Act does not mandate the elimination of all harm, but its proportionate minimisation.
24. Fiorita Wine Bar & Restaurant is operated by an experienced and responsible licensee with a strong compliance history since the licence was granted in 2016. The licensee has consistently complied with licence conditions, voluntarily accepted restrictions in the public interest, and has an established record of cooperation with the WA Police and the Liquor Enforcement Unit.
25. The premises is located within The Quarter, a government-initiated civic precinct reflecting Karratha's evolution into a mature, family-oriented regional centre. Since 2016, Karratha has undergone substantial demographic, economic and civic change, moving away from a predominantly transient FIFO population toward a stable residential community with more sophisticated hospitality and consumer expectations.
26. The evidence before the Director demonstrates a clear and legitimate consumer requirement for the proposed variation. Letters of support from sporting clubs, community organisations and business groups confirm a consistent inability to source Fiorita's boutique liquor products for planned events, functions and fundraising activities under the current licence conditions.
27. Those supporting stakeholders identify that Fiorita's curated wines, small-batch spirits and bespoke beverage offerings are not available through conventional packaged liquor outlets in Karratha. The demand is for pre-planned, purpose-specific procurement rather than casual consumption, and the evidence reflects structured organisational needs rather than speculative preference.

28. The Application was advertised in accordance with statutory requirements. No objections or interventions were received from WA Police, the Executive Director of Public Health, local health services, Aboriginal organisations or other at-risk groups. The absence of objection from authorities charged with assessing alcohol-related harm is a significant indicator that the proposal does not present an unacceptable risk.
29. The proposed variation is supported by a comprehensive and enforceable harm minimisation framework. Safeguards include mandatory 72-hour advance ordering to prevent impulse purchasing, full pre-payment prior to release, purchaser identification and documentation, maintenance of transaction registers, and retention of records for audit and inspection.
30. All section 64 restrictions applicable to Karratha would remain in force, including prohibitions on large beer bottles, high-volume containers, fortified wine above prescribed limits and high-strength bulk liquor. The proposal does not reintroduce products historically associated with elevated harm risk.
31. The Director's refusal relies on generalised and historical concerns rather than current, locality-specific evidence relating to Karratha. It treats the proposal as a broad relaxation of restrictions rather than the confined, accountable exemption mechanism actually sought, and gives insufficient weight to the absence of objection from relevant authorities.
32. The Director also overstates reliance on the 72-hour pre-order mechanism, characterising it as the primary safeguard when it is, in fact, only one element of a broader harm minimisation framework. This mischaracterisation materially affects the evaluative balance undertaken in the decision.
33. Established authority confirms that public interest assessments under the Act must be evidence-based and locality-specific. Courts have cautioned against reliance on broad policy assumptions or regional data disconnected from the proposal under consideration, and have confirmed that incremental or speculative harm is insufficient to justify refusal.
34. The Liquor Commission's reasoning in *Sunseasons Pty Ltd v Director of Liquor Licensing* (LC 21/2019) is directly relevant. In that matter, the Commission rejected the imposition of blanket or region-wide restrictions in the West Pilbara, including Karratha, due to reliance on outdated and non-specific data, emphasising the need for proportional and locality-responsive regulation.
35. The proposed variation does not undermine the integrity of the section 64 framework. Rather, it preserves core harm minimisation measures while introducing a controlled, auditable exemption model comparable to protocols already accepted in more stringently regulated Pilbara localities.
36. The proposed variation advances consumer requirements and responsible industry development without increasing the risk of alcohol-related harm. The refusal of the Application is not supported by current, locality-specific evidence and does not reflect a proper public interest balancing exercise.
37. The Applicant therefore submits that the decision of the Director should be quashed and substituted with a decision approving the proposed variation, or alternatively remitted for reconsideration in accordance with the Commission's findings.

Submissions from the Intervenor

38. The Director opposes the Review Application and submits that the decision dated 16 December 2024 refusing the proposed licence variation was correct on the merits and should be affirmed. The Applicant has not discharged the onus under section 38(2) demonstrating that the proposed variation is in the public interest.
39. The proposed additional condition seeks to remove volume, price, spirits and RTD restrictions where liquor is pre-ordered at least 72 hours prior to sale or delivery. In substance, the condition would relax significant harm minimisation controls currently applying to packaged liquor sales at the premises.
40. The wording of the proposed condition is ambiguous. It is unclear whether the Applicant intends the condition to modify existing licence conditions reflecting Pilbara section 64 restrictions, particularly those relating to container size and alcohol strength. To the extent that the condition is capable of affecting those restrictions, it is inconsistent with the established regulatory framework in Karratha.
41. The Director submits that the Pilbara section 64 restrictions, including container size limits and prohibitions on certain high-risk products, remain necessary to address elevated levels of alcohol-related harm in Karratha and the broader Pilbara region. The Applicant has provided no cogent evidence demonstrating that those risks have diminished or that the restrictions are no longer required.
42. While the Applicant asserts that the proposed variation would preserve section 64 container size restrictions, that assertion is not reflected clearly in the drafting of the condition. If the intention is not to affect container size limits, the condition would require substantial redrafting. If the intention is to modify those limits, the Application should be refused for lack of supporting evidence.
43. The Director accepts that the Applicant has provided letters of support from local organisations and businesses expressing a desire to purchase liquor for events and functions. However, those letters do not evidence demand for the sale of high-risk products, larger container sizes, spirits, RTDs, or wine priced below \$10 per bottle.
44. Properly characterised, the evidence of support indicates a desire to purchase greater quantities of the boutique products already sold by the Applicant, not an expansion into cheaper or higher-risk packaged liquor. That evidence does not support the breadth of the variation sought.
45. The Applicant relies on changes in Karratha's demographic profile and lifestyle, including a growing residential population and increased civic investment. The Director submits that these assertions are general in nature and do not amount to evidence of a reduction in alcohol-related harm or a basis for relaxing existing harm minimisation controls.
46. The absence of liquor infringements by the Applicant is acknowledged, but it is not determinative. The purpose of the existing conditions is to minimise community-wide harm arising from the availability of packaged liquor, not to respond to the compliance history of an individual licensee.

47. The Director relies on historical and contemporary evidence demonstrating that Karratha experiences elevated rates of alcohol-related harm, including higher rates of alcohol-related assaults and hospitalisations compared to the State average. These considerations were central to the original grant of the licence and remain relevant.
48. Investigations conducted by the Director, including the 2012 Pilbara inquiry and the 2022 review of section 64 restrictions, concluded that the existing regulatory framework is effectively minimising harm in the region. That framework includes restrictions on container size, product type, and pricing.
49. The Applicant has not produced evidence contradicting those conclusions or demonstrating that the harm minimisation objectives underpinning the section 64 restrictions have been achieved to the point where relaxation is justified.
50. The Director submits that the Applicant's proposed harm minimisation measures, including the maintenance of a register and reliance on a 72-hour delay, are insufficiently developed. No evidence has been provided explaining how these measures would operate in practice, how customers would be authorised, or how misuse would be prevented.
51. As currently worded, the proposed condition would permit any member of the public to access liquor free from key harm minimisation restrictions simply by pre-ordering 72 hours in advance. That outcome is not confined to bona fide community or corporate events and is not in the public interest.
52. The Director accepts that a more limited and tightly controlled bulk-purchase condition, confined to clearly defined circumstances and supported by enforceable compliance mechanisms, might be capable of serving a public interest. However, that is not the condition presently sought by the Applicant.
53. The Director submits that the principles articulated in *Sunseasons Pty Ltd v Director of Liquor Licensing* (LC 21/2019) do not assist the Applicant. While that decision cautions against reliance on broad assertions, it equally requires cogent evidence to justify relaxation of harm minimisation measures, which is absent here.
54. In undertaking the public interest balancing exercise required by sections 5 and 64 of the Act, the Director properly afforded significant weight to the primary object of minimising alcohol-related harm. The Act requires minimisation, not eradication, but it does not permit harm controls to be relaxed without evidence.
55. The Director did not err in interpreting or applying the Pilbara section 64 restrictions. Those restrictions formed part of the relevant context and were properly considered in assessing whether the proposed variation was desirable or in the public interest.
56. Having regard to all of the material before the Director, the Applicant failed to establish that the public interest in relaxing the existing restrictions outweighs the public interest in maintaining effective harm minimisation controls in Karratha.
57. Accordingly, the Director submits that the Application for review should be dismissed and the decision of 16 December 2024 affirmed. In the alternative, if the Commission is minded to vary the licence, any variation should be limited, precisely drafted, and incorporate strict conditions consistent with the Director's proposed alternative framework.

LEGAL AND STATUTORY FRAMEWORK

58. The Commission is not constrained by a finding of error on the part of the Director but is to undertake a full review and make a determination on the basis of the same materials that were before the Director (*Hancock v Executive Director of Public Health* [2008] WASC 224, [54]; section 25(2c) of the Act).
59. On review pursuant to section 25 of the Act, the Commission may:
- a) affirm, vary or quash the decision of the Director;
 - b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance;
 - c) give directions:
 - i. as to any questions of law reviewed; or
 - ii. to the Director, to which effect shall be given; and
 - d) make any incidental order.
60. When conducting a review, the Commission:
- a) may make its determination on the balance of probabilities: section 16(1)(b)(ii);
 - b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply: section 16(7)(a);
 - c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms: section 16(7)(b); and
 - d) is to act speedily and with as little formality and technicality as is practicable: section 16(7)(c).
61. In addition, the Director is obliged to comply with the requirements of procedural fairness when exercising the powers conferred by the Act (*Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASCA 356).
62. Under section 33(1) of the Act, the Commission has an absolute discretion to grant or refuse the Application on any ground, or for any reason, that it considers in the public interest. This power must be exercised consistently with the objects set out in sections 5(1) and 5(2) of the Act, as well as the purpose of the Act.
63. The decision by Allanson J in *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 [42] sets out the Commission's function in reviewing a decision of the Director pursuant to section 25 of the Act as follows:
- a) make findings that specifically identify the existing levels of harm and ill-health in the relevant area due to the use of liquor;
 - b) make findings about the likely degree of harm to result from the grant of the application;

- c) assess the likely degree of harm to result from the grant of the application against the existing degree of harm; and
- d) weight the likely degree of harm, so assessed, together with any other relevant factors to determine whether it is in the public interest to grant the application.

64. The Commission also:

- a) must take into account those matters relevant to the objects of the Act; and
- b) may take into account the matters set out in section 38(4) of the Act, which includes the harm or ill-health that might be caused to people, due to the use of liquor.

65. The failure to refer to any specific evidence in written reasons does not mean that the evidence has not been considered (*Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017)).

66. Section 64(1) of the Act provides that the licensing authority may, at its discretion, impose conditions in addition to conditions specifically imposed by the Act; or in such a manner as to make more restrictive a condition specifically imposed by the Act, and may vary or cancel any condition previously imposed by the licensing authority, having regard to the tenor of the licence and the circumstances in relation to which the licensing authority intends that it should operate.

67. More specifically, section 64(3) provides that the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable to:

- a) ensure the safety, health or welfare of persons who may resort to licensed premises is not at risk;
- b) ensure liquor is sold and consumed in a responsible manner;
- c) minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;
- d) ensure public order and safety;
- e) limit:
 - i. the kinds of liquor that may be sold;
 - ii. the manner or containers, or number or types of containers, in which liquor may be sold;
 - iii. the days on which, and the times at which, liquor may be sold; and
 - iv. limit the times when packaged liquor may be sold.

68. Section 64 of the Act empowers the licensing authority to (subject to the Act) impose, vary, or cancel conditions 'in relation to any licence'.

69. The licensing authority may also vary or cancel any condition previously imposed.

70. The discretionary power under section 64 must be exercised judicially and reasonably and in the public interest, taking into consideration the scope and purpose of the Act and its objects as set out in section 5. The primary objects of the Act are:
- a) to regulate the sale, supply, and consumption of liquor;
 - b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - c) 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.
71. Further, one of the Act's secondary objects requires the licensing authority to encourage responsible attitudes and practices towards the promotion, sale, supply, service, and consumption of liquor that are consistent with the interests of the community.
72. The term "public interest" is not defined in the Act. Nor does the Act expressly state the nature of the factors to be considered by the Commission in determining whether an application is in the public interest.
73. The term "public interest" is defined in the Macquarie Dictionary as "the benefit or advantage to a whole community", as opposed to the individual. It directs attention to that conclusion or determination which best serves the advancement of the interests or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.
74. While the term "public interest" is not defined in the Act, section 38(4) sets out matters which the licensing authority may have regard to in determining whether the grant of an application is in the public interest. Additionally, some of the measures prescribed in section 64(3) also inform a discussion on the relevant public interests for the purposes of an inquiry under section 64 of the Act. Further, in *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70, Tamberlin J relevantly stated that:
- "...the expression 'in the public interest' directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public...and its content will depend on each particular set of circumstances."*
75. Similarly, in *Commissioner of Police v Liquor Commission of Western Australia* [2019] WASC 165, Archer J stated that:
- "...the plain meaning of section 64 is that the licensing authority has the power to impose conditions on a particular licence. Each time the licensing authority exercises that power, it is a decision to impose conditions on that particular licence. No doubt, the licensing authority may give reasons for exercising this power in relation to multiple licences in a single set of reasons. However, each exercise of power in relation to each licence is a separate decision under the Act."*
- Further, the plain meaning of section 64 is that the licensing authority does not have the power to impose conditions on licenses within a geographical area or some other classification."*

76. Given the interpretation of section 64 of the Act set out by Justice Archer, the task of the Commission is to:
- a) consider the levels of harm and ill-health caused by liquor in the town of Karratha; and
 - b) if satisfied that there are levels of harm or ill-health caused by liquor, determine:
 - i. whether it is appropriate to exercise discretion to impose further conditions on a licence having regard to the tenor of the licence and the circumstances in relation to which the licensing authority intends that it should operate; and
 - ii. what conditions should be imposed in order to achieve the relevant purpose(s) set out in section 64(3) of the Act.
77. It should also be noted that section 64 proceedings are not disciplinary proceedings against a licensee where a causal link between the operation of the licensed premises and the matters complained of need to be established, but rather, the issue is whether, having regard to the objects of the Act, as a matter of public policy, it is appropriate and in the public interest to impose conditions on a licence or licences.
78. Further, the harm minimisation object is directed to minimising harm or ill-health caused to people, or any group of people, due to the use of liquor. While it is not necessary to find that all members of a community are at risk, often it is the most vulnerable people in the community that may require some protection. This object is expressed very broadly and is not based on some narrow concept of what harm might arise from the misuse or abuse of alcohol.
79. In discharging its functions under the Act, the Commission needs to weigh and balance the competing interests, however, the possibility that the use of liquor may cause harm or ill-health to people, or any group of people, is an important element of the public interest considerations that underlie section 5(1)(b) and the discretion conferred upon the Director under section 33 of the Act.
80. Ipp J in *Executive Director of Health v Lily Creek International Pty Ltd* [2000] WASCA 258 noted that:

“Whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to in Malec v JC Hutton Pty Ltd, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.

In my opinion, where the degree of probability is less than 51 per cent, it does not follow that the possibility of such harm or ill-health is to be ignored. In my view, there is nothing in the wording of s 5(1)(b) that leads to such a view. On the contrary, the public interest considerations that underlie s 5(1)(b) indicate that the potential of harm or ill-health is to be taken into account irrespective of whether the prospect of harm or ill-health is a possibility or a probability. The wording in s 69(8a) is also indicative of the intent to this effect.

Section 33 of the Act confers upon the Licensing Authority an absolute discretion to grant or refuse an application on any ground that the Licensing Authority considers in the public interest. The potential of harm or ill-health to people, irrespective of whether the harm or ill-

health is proved on the balance of probabilities, would be a powerful public interest consideration. The section is therefore consistent with the view that the mere possibility of harm or ill-health would always be a relevant matter for the Licensing Authority when discharging its functions.”

DETERMINATION

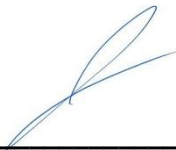
81. Much of the material filed by the Applicant asserted a community requirement for high quality liquor that is not otherwise available in the region for events. At the hearing, the Commission asked the Applicant whether there was a genuine nexus between that asserted community requirement and the basis for the Application.
82. Counsel for the Applicant made clear that the variation sought is *not* predicated on there being an event. The Commission accepts that submission. That concession clarifies the central issue: although the supporting material is framed around a community need for specialist liquor for events, the variation actually sought is not confined to events and would permit recurring bulk orders for any purpose.
83. Counsel for the Director put to the Applicant that what was sought did not match the terms of the variation: if the Applicant’s concern was the supply of liquor for particular events, that could be accommodated, but the variation as framed would not be so confined. The Applicant confirmed that the variation sought is not event-based and that nothing in it would prevent bulk orders for any reason or purpose.
84. The Commission therefore finds that the Application, as framed, is not in fact directed to the community’s asserted need for specialist liquor for particular events. That is fatal to the Application as presently framed.

ORDERS

85. The Application is refused and the decision of the Director of Liquor Licensing is affirmed.



NICHOLAS VAN HATTEM
DEPUTY CHAIRPERSON



JARED BROTHERSTON
MEMBER



TONY DI FRANCESCO
MEMBER