

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

Applicant: Curtin Student Guild
(*represented by Mr David Luketina of the Curtin Student Guild*)

Respondent: Fleximix Pty Ltd
(*represented by Mr Mario Sequeira of Hospitality Total Services (Aus) Pty Ltd*)

Intervenor: Chief Health Officer
(*represented by Ms Tayu Wilker of the State Solicitor's Office*)

Commission: Mr Paul Shanahan (Presiding Member)
Mr Jared Brotherston (Member)
Mr Tony Di Francesco (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988 (Act)* for review of the decision of the Director of Liquor Licensing to conditionally grant a liquor store licence for premises known as Exchange Cellars. The Applicant asks the Commission to modify Trading Conditions 2 and 8 on that licence.

Premises: Exchange Cellars
Shop R2, Building 431, University Boulevard
Bentley, WA, 6102

Date of lodgement of Application: 21 March 2024

Date of Hearing: On papers

Date of Determination: 10 March 2025

Determination: The decision of the Delegate of the Director of Liquor Licensing is varied by the modification to Trading Conditions 2 and 8 as referred to in paragraph 91 of the Determination and in all other respects the decision of the Delegate of the Director of Liquor Licensing is affirmed.

Authorities referred to in this Determination:

- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2017] WASC 88
- *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
- *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366
- *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384
- *Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227

Nature Of This Application

1. This is an application for a review of the decision (**Decision**) made by a delegate of the Director of Liquor Licensing (**Delegate**) on 29 February 2024.
2. This matter concerns an application by Fleximix Pty Ltd (**Respondent**) lodged on 18 October 2022 (**Liquor Store Licence Application**) for the conditional grant of a Liquor Store Licence pursuant to sections 47, 62 and 68 of the *Liquor Control Act 1998* (**Act**) for premises to be known as Exchange Cellars situated at Shop R1, Building 431, University Boulevard, Bentley, Western Australia, 6102 (**Premises** or **Liquor Store**).
3. In the Decision, the Delegate concluded that the Liquor Store Licence Application for the Liquor Store Licence at the Premises, was approved and that the Liquor Store Licence had been conditionally granted subject to the conditions in [1(a) to (g)] of the Decision.
4. In [2] of the Decision, the Delegate held that on confirmation of the conditional grant, trading conditions will be imposed on the issue of the Liquor Store Licence as detailed in the schedule to the Decision (entitled **Schedule of Trading Conditions**).

Objections And Interventions To Liquor Store Licence Application

5. Objections to the Liquor Store Licence Application in the first instance were lodged by the Curtin Student Guild (the Applicant and First Objector) and the Public Health Association Australia (WA Branch), Australian Health Promotion Association (WA Branch) and Cancer Council WA (Second Objector).
6. As stated in the Decision, the First Objector's grounds for objection proceeded on the basis that the grant of the Liquor Store Licence would not be in the public interest (section 74(1)(a) of the Act), would cause undue harm or ill-health (section 74(1)(b) of the Act) and was based on concerns about:
 - a) underaged drinking, impulsive behaviour and binge drinking posed by a liquor store on the University campus;
 - b) sexual harassment and sexual assault, given the link between alcohol consumption, sexual assault and sexual harassment;
 - c) safety, crime, undesirable/antisocial behaviour and increased risk of consumption at an educational facility; and
 - d) the high density of surrounding liquor facilities and locality in relation to section 36B(4) of the Act.
7. As stated in the Decision, the ground of objection relied upon by the Second Objector was that the grant of the Liquor Store Licence would not be in the public interest (section 74(1)(a) of the Act).
8. That ground of objection relied on similar issues raised by the Intervenor, namely concerns about:
 - a) harms from alcohol in Western Australia being wide-ranging and extensive;
 - b) the proposed location putting young university students at increased risk of harm;

- c) the link between alcohol availability and harm is well established;
 - d) the local packaged liquor requirements can reasonably be met by existing packaged liquor premises;
 - e) increased risks of alcohol use in an education setting;
 - f) the location of several sensitive institutions in close proximity to the proposed Premises; and
 - g) risks associated with the colocation of a liquor store to an IGA supermarket.
9. The Chief Health Officer (**Intervenor** or **CHO**) lodged an Intervention.
10. In the first instance the Intervenor did not object to the grant of the Liquor Store Licence but rather intervened to make submissions particularly for the purpose of introducing evidence or making representations on the harm or ill-health caused to people, or any group of people, due to the use of liquor, and the minimisation of that harm or ill-health.
11. As stated by the Intervenor, the purpose of the Intervention was to make representations that:
- a) the Liquor Store is to be located on a university campus in a new precinct in close proximity to student accommodation used by large numbers of university students;
 - b) there is evidence a large proportion of young people and university students, including Curtin University students, drink at levels that place them at risk of single occasion harm;
 - c) research shows university students experience a range of harms due to their own and other's drinking;
 - d) the Liquor Store will be close to services used by students and others for daily needs purposes such as an IGA supermarket, early education and child-care services and a major bus terminal, resulting in a high exposure to the Liquor Store; and
 - e) increasing ease of access to alcohol and opportunities to impulse purchase to a high concentration of at-risk groups known to experience alcohol harms is likely to contribute to an increase in harm in the locality.
12. The Intervenor also submitted that if consideration is given to the grant of the Liquor Store Licence, it is suggested the following be placed on the licence to reduce some of the risks of harm associated with the proposal:
- a) daily volume limits lower than those proposed by the Respondent;
 - b) reduced trading hours; and
 - c) a condition preventing alcohol product and brand advertising anywhere on campus that is visible from child focused services and within a radius set by the Director that includes key pedestrian routes used to get to child focused services in the precinct. This does not exclude promotion of the venue name.

13. In recognition of the acknowledged potential risk factors associated with the application for a Liquor Store Licence, the Respondent proposed the following harm minimisation initiatives in its Public Interest Assessment (**PIA**):
- a) spirits would be stored behind the sales counter;
 - b) under 25 ID checks;
 - c) CCTV throughout the Premises, including delivery areas;
 - d) limited external advertising;
 - e) a range of zero alcohol products, low and mid-alcohol beer and wine to be available;
 - f) display of appropriate signage throughout the Liquor Store relating (but not limited) to secondary supply of alcohol, not serving juveniles or drunk persons, etc.;
 - g) a prohibition on the sale of cask wine in containers over 2 litres; and
 - h) limits on individual transactions as appropriate, by way of a Takeaway Alcohol Management System (**TAMS**) to be integrated with the Point of Sale of:
 - (i) 3 bottles of wine;
 - (ii) 6 cans/stubbies of beer or cider;
 - (iii) 6 cans/stubbies of ready-to-drink products (RTD Products); and
 - (iv) 1 bottle of spirits or liqueur.

Trading Conditions

14. In the Decision, the Delegate granted the application for a conditional grant of a Liquor Store Licence subject to eight Trading Conditions. For ease of reference, those eight Trading Conditions are set out as follows:
1. *The licensee is authorised to sell and supply packaged liquor in accordance with the provisions of s 47 of the Act.*
 2. *The licensee shall not sell more than the following quantities and types of liquor per person per day:*
 - (f) *six cans/stubbies of beer or cider; or*
 - (g) *six cans/stubbies of ready-to-drink (RTD); or*
 - (h) *1.5 litres of wine (i.e., two bottles or 1.5 litre cask); or*
 - (i) *one litre of spirits; or*
 - (j) *one litre of liqueur.*
 3. *All spirits must be stored behind the Point of Service (POS) counter.*
 4. *The Applicant must use a Takeaway Alcohol Management System (TAMS) to record and manage the purchase limits per person per day.*

5. *As a minimum, this Applicant's TAMS should record the amount and type of liquor purchased by any individual within a 24-hour period and automatically alert retail staff when any daily purchase limit has been reached.*
6. *Personal information captured for the purposes of the TAMS must not be stored beyond a 24-hour period.*
7. *A CCTV video surveillance system must be in place and operational. The system must comply with the minimum requirements identified and be maintained in accordance with the Director of Liquor Licensing's Safety and Security at Licensed Premises policy.*
8. *There is to be no advertising of liquor products or other promotion of liquor there is to be no advertising of liquor products or other promotion of liquor:*
 - (i) *on the external façade of the licensed premises; or*
 - (ii) *by A-frames, billboards, or other mediums within the vicinity of the licensed premises, anywhere on campus that is visible from child focused services, and in key travel corridors utilised to access child-focused services in the Exchange Precinct.*
15. The Commission notes the difference in wording between the Trading Conditions proposed by both the Respondent and the Intervenor and the Trading Conditions that were imposed by the Delegate in the Decision.
16. The Commission also notes the following:
 - a) In Trading Condition 2, the subparagraphs commence at subparagraph (f) when they should commence at subparagraph (a); and
 - b) In Trading Condition 8 the words: '*there is to be no advertising of liquor products or other promotion of liquor*' are repeated on the first and second lines.

This Application For Review

17. On 25 March 2024, the Applicant applied pursuant to section 25 of the Act, for a review of the Decision.
18. The Applicant seeks by way of this Application, to secure a modification to Trading Conditions 2 and 8 as follows:
 - a) In respect to Trading Condition 2, that the size limit for bottles of spirits and liqueur should be modified to 0.7L instead of 1L; and
 - b) In respect to Trading Condition 8, that the prohibitions on advertising should be modified to additionally prohibit:
 - (i) any advertising within student accommodation on the Curtin University, Bentley Campus; and
 - (ii) any direct marketing activities targeting students residing in on-campus student accommodation on the Curtin University, Bentley Campus. Direct marketing activities include but are not limited to the targeted sending of promotional materials, advertisements, or offers via SMS, email, mail, phone calls, social media, influencers or any other means of communication directly to students.

19. The Commission notes that the Applicant applied pursuant to section 25 of the Act (and being this Application), for a review of the Decision with respect to the conditions on the Liquor Store Licence and not the grant of the Liquor Store Licence itself.

Applicant's Standing

20. Before proceeding further, a question to be considered by the Commission was whether the Applicant has standing to bring this Application.
21. Under section 25(1) of the Act, an 'interested person' who is dissatisfied with a reviewable decision may, subject to sections 25(3) and 25(5) of the Act, apply to the Commission for a review of the decision.
22. The Commission finds that the Decision is a reviewable decision within section 25(1A)(b) of the definition of 'reviewable decision' contained within section 25 of the Act.
23. The further question for the Commission is then, whether the Applicant is an 'interested person' for the purposes of section 25(1) of the Act.
24. Section 25(1A) of the Act provides that "*in relation to a reviewable decision, 'interested person' means ... (b) in the case of a decision referred to in paragraph (b) of the definition of 'reviewable decision', a person who is a party to the proceedings before the Director*".
25. Section 3 of the Act relevantly states that: "**'party to proceedings'** includes --- (a) an objector, unless a determination is made under s 74(4) in relation to the objection ...".
26. The Commission holds that the Applicant is an 'interested person' for the purposes of section 25(1) of the Act on the grounds that:
- a) the Applicant was the First Objector to the application before the Director for the Liquor Store licence;
 - b) the First Objector as an objector, is included in the definition of 'party to proceedings'; and
 - c) no determination was made by the Director or the Delegate under section 74(4) of the Act in relation to the objection made by the Applicant.
27. The Commission therefore finds that the Applicant has standing as an 'interested person' as specified in section 25(1A)(b) of the Act and is therefore entitled to make this Application to the Commission for a review of the Decision.

Legal And Statutory Framework For Review

28. When conducting a review of a decision made by the Director (or the Delegate), the Commission constitutes the 'licensing authority' (section 7(1) of the Act). In this capacity, the Commission undertakes a review of the Delegate's decision on its merits as and by way of a rehearing.
29. The Commission is to undertake a 'full review' of the materials before the Delegate and to make its own determination on the basis of those materials. In so doing, the Commission must adopt a rational process of decision making and is bound to examine the evidence in order to make findings and/or draw inferences which, in a rational manner, should be drawn from the materials before it (*Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384 at [28]-[29]).

30. The Commission is not required to find error on the part of the Delegate when undertaking a review under section 25 of the Act, but the Commission instead, undertakes a full review and makes a determination on the basis of the same materials that were before the Delegate when the decision was made (*Hancock v Executive Director of Public Health* [2008] WASC 224).
31. Section 25(4) of the Act states that on a review under section 25 of the Act, the Commission may:
- a) affirm, vary or quash the decision subject to the review; and
 - 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; and
 - c) give directions:
 - (i) as to any question of law, reviewed; or
 - (ii) to the Director, to which effect shall be given; and
 - d) make any incidental or ancillary order.
32. Section 16 of the Act prescribes that the Commission:
- a) may make its determinations on the balance of probabilities (section 16(1)(a)(ii)); and
 - 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)); and
 - 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)).
33. One effect of these provisions is that the Commission must give proper and fair consideration to any submissions made by parties to a review, and to any evidentiary material referred to in those submissions, whether or not it appears the Director (or the Delegate) gave these materials such consideration.
34. Although not bound by the formal rules of evidence, the Commission must act upon materials which have rational probative force (*Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2017] WASC 88 at [19]).
35. The Commission is required to give reasons for its decision, at least when there is a right of appeal to the Court (*Hancock* at [64]).
36. Where there is a conflict in evidence which is significant to the outcome, the reasons must refer to the conflicting evidence and explain why one set of evidence is preferred over another. Similarly, where there is a conflict in submissions which is significant to the outcome, it is necessary for the Commission to set out the differing positions advanced by the parties and the reasons why it prefers one position over another (*Hancock* at [69]).

37. 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).
38. The Director (or the Delegate) and 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.
39. Pursuant to section 69(8a) and (8b) of the Act, the CHO may intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations in relation to the harm or ill-health caused to people, or any group of people, due to the use of liquor, and the minimisation of that harm or ill-health.
40. Pursuant to section 73(10) of the Act, an objector bears “*the burden of establishing the validity of [the] objection*”. Pursuant to section 74(1) of the Act, such objection can only be made on the grounds:
 - a) *that the grant of the application would not be in the public interest; or*
 - b) *that the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; or*
 - c) *that if the application were granted:*
 - (i) *undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or*
 - (ii) *the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened;*

or

 - d) *that the grant of the application would otherwise be contrary to the Act”.*
41. The Commission is obliged to determine the Application by reference to the issues which arise from the Application in the context of the relevant provisions of the Act, the evidence (including notorious facts) before the Commission and any submissions made by the applicant and the interveners (*Woolworths Ltd v Director of Liquor Licensing* [2013] WASCA 227, [55] (Buss JA)).
42. The Commission has considered all of the information submitted by the parties and the fact that the Commission has not referred to a specific submission or piece of evidence does not mean that it has not been taken into account by the Commission.

Elements To Be Met Regarding The Liquor Store Licence Application

43. As explained in *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (Liquorland) at [2], an applicant for a liquor store licence must satisfy the ‘licensing authority’ (being either the Director or the Commission depending on the context) of two things:

- a) that local packaged liquor requirements cannot reasonably be met by existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated (the **Consumer Requirements condition**) pursuant to section 36B of the Act; and
- b) that the grant of the application is in the public interest pursuant to section 38(2) of the Act (the **Public Interest condition**).

Consumer Requirements condition

44. In respect to the Consumer Requirements condition, the Delegate was satisfied that the Respondent (as applicant in the Liquor Store Licence Application), had discharged its onus under section 36B(4) of the Act for the reasons set out in the Decision. The Commission adopts those reasons of the Delegate (without the necessity of repeating them), and also finds that the Consumer Requirements condition has been met by the Respondent.

Public Interest condition

45. The Respondent asserted that granting the Liquor Store Licence would serve the public interest by enabling:
- a) convenience shopping in the revamped precinct, with the Liquor Store complementing other services to be offered in the precinct, such as a supermarket;
 - b) the provision of a wide variety of liquor products;
 - c) the promotion and support of liquor producers in Western Australia; and
 - d) the meeting of diverse consumer requirements for liquor and related services, including from people with allergen/dietary sensitivities and preferences for low, mid, or non-alcoholic beer, wine, and spirits.
46. In recognition of the acknowledged potential risk factors associated with the Liquor Store Licence Application, the Respondent proposed the harm minimisation initiatives in its PIA as set out in paragraph 13 (above) of this Determination.
47. The Delegate states in the Decision, that in *Executive Director of Health v Lily Creek International Pty Ltd* [2000] WASCA 258, Justice Ipp observed that the Act's harm minimisation object does not necessarily mean that where harm or ill-health may be caused to people by the grant of a licence, that no licence should be granted.
48. The licensing authority may decide that:
- a) the possibility of harm or ill-health is so remote or so insignificant that it should not be taken into account; or
 - b) it may be that the possibility of harm or ill-health is serious enough to cause the licensing authority to impose stringent conditions on a licence.
49. The Director's Delegate in the Decision then further states that "...accordingly in these proceedings I am satisfied that any risk of harm or ill-health arising from the grant of the licence can be dealt with by way of conditions on the licence. Therefore, the issue for determination relates to what conditions would promote the public interest".

50. The Commission accepts the Delegate's reasoning and finds that any risk of harm or ill-health arising from the grant of a liquor store licence can be dealt with by way of conditions on the licence.
51. Moreover, it is the Commission's task to determine what conditions would promote the public interest.
52. The Trading Conditions have been included in the Liquor Store Licence by the Delegate in the Decision. It is for the Commission to determine whether the Trading Conditions should be affirmed in their current form or modified.
53. It is the Commission's view that Trading Conditions 1, 3, 4, 5, 6, and 7 in their current form would promote the public interest and should remain in their current form for the reasons set out in the Decision.
54. This Determination now deals with Trading Conditions 2 and 8.

Trading Condition 2

55. In the application before the Delegate, the Respondent submitted that it would not be in the public interest to further restrict the daily purchase limit to only one product, as proposed by the Intervenor, but that it would consider any restriction the Director deems necessary in the public interest.
56. In the Decision, the Delegate found that the daily limits proposed by the Respondent were not sufficient to mitigate the risks associated with the locality being a university campus, and a daily limit consisting of one bottle of wine, six cans or stubbies of beer or cider, six cans/stubbies of RTD products and one bottle of spirits or liqueur is not sufficient to avoid the risks identified by the Intervenor, which are unique to the locality.
57. The Delegate opined that this is particularly so when regard is given to the fact that university students will be a patron target group of the proposed Premises, the alcohol related harms experienced by young people and university students, due to a high prevalence of risky alcohol use, and the nature of alcohol related harm experienced by young people and undergraduate university students.
58. The Delegate went on to hold that in arriving at that view, the Delegate also noted that consumers, including university students and other persons, would also be able to patronise the Curtin University Tavern to enjoy on-premises consumption and students would also be able to purchase packaged liquor from the Curtin University Tavern, after displaying their student Guild Identification Cards.
59. In the Delegate's view:
 - a) these factors, together with the historical information provided by the Applicant about a series of alcohol-fuelled assaults that previously occurred on campus, also heighten the risks of harm associated with convenience purchasing of packaged liquor from the proposed Premises; and
 - b) therefore considered the appropriate daily purchase limit for the Premises should be similar to those recommended by the Intervenor and consequently held that Trading Condition 2 in its current form, would apply.

60. The Applicant states that the Delegate in the Decision:
- a) noted that university students will be a patron target group of the Premises, the alcohol related harms experienced by young people and university students due to a high prevalence of risky alcohol use, and the nature of alcohol related harm experienced by young people and undergraduate university students; and
 - b) also stated that the Intervenor made a representation that Exchange Cellars is to be located on a university campus in a new precinct in close proximity to student accommodation used by large numbers of university students.
61. The Applicant alleges that options (f) to (h) in Trading Condition 2 amount to around 15 to 16 standard drinks each for 500ml cans or high alcohol beers/ciders. However, options (i) and (j) in Trading Condition 2, are around 31 and 24 standard drinks respectively. The Applicant asserts that there is an inconsistency between the options. The Commission accepts that assertion.
62. The Applicant states that Trading Condition 2 should be modified to provide consistency (with the lower alcohol options) which would result in option (i) being 0.5L (rather than 1L of spirits).
63. Further the Applicant states that in recognition of standard bottle sizes of 0.7L for spirits and liqueur, options (i) and (j) (which relate to spirits and liqueur), should be modified to 0.7L instead of 1L.
64. In addition, the Intervenor states that it is desirable to modify Trading Condition 2 to limit the amount of wine that can be purchased to one 750 ml bottle per person per day and to specify a size restriction in relation to spirit and liqueur bottles.

Trading Condition 8

65. The Applicant states that Trading Condition 8 states that there is to be no advertising of liquor products or other promotion of liquor:
- a) on the external façade of the licensed Premises; or
 - b) by A-frames, billboards or other mediums within the vicinity of the licensed premises, anywhere on campus that is visible from child focused services, and in key travel corridors utilised to access child focused services in the Exchange Precinct.
66. The Applicant supports Trading Condition 8 which aims to prevent marketing in the vicinity of the licensed premises and to children.
67. However, the Applicant contends that Trading Condition 8 in its current form, is not adequate to prevent marketing to students who live on campus in the vicinity of the licensed premises.
68. The Applicant submits the following:
- a) that Trading Condition 8 should be modified to prohibit any advertising within student accommodation on the Curtin University, Bentley Campus; and
 - b) that an additional requirement (and being paragraph (c) below) should be added to Trading Condition 8:

“(c) by any direct marketing activities targeting students residing in on-campus student accommodation on the Curtin University, Bentley Campus. Direct marketing activities include but are not limited to the target sending of promotional materials, advertisements, or offers via sms, email, phone calls, social media, influencers or any other means of communication directly to students”.

69. The Applicant states that its primary concern is the detrimental effect that exposure to alcohol consumption in the context of leisure activities can have on juveniles.
70. Curtin University enrolment data for 2017-2021 shows that the majority of students are undergraduates studying full-time internally (as opposed to online or partially online). While students may be of any age, based on available information, it is reasonable to consider the student cohort will include a sizable proportion of young people.
71. A Curtin University specific study found 80% of surveyed Curtin University students reported having experienced harm as a result of their own alcohol use, supporting the fact that there is a significant amount of harm and ill-health associated with alcohol use existing at Curtin University in particular (and at universities generally). Further, there is significant research that shows that university students more generally are at greater risk of alcohol related harm, whether or not they are the person consuming alcohol.
72. The Intervenor submits that due to the proposed Liquor Store operating on campus, it is reasonable to assume a greater than average number of patrons will be students. This assumption is informed by the large number of students that live on campus or close to campus at present, and the 1,000 additional students which the Curtin University precinct plans to host in future. This assumption is further supported by the high proportion of persons aged 20-24 that live near Curtin University.
73. The Commission accepts that submission.
74. There are 13 childcare centres and schools within 2km of Curtin University, three of which are located on campus. Additionally, development proposals for the Greater Curtin Retail Precinct propose placing further child related options (such as rock climbing) in close proximity to Exchange Cellars.
75. Children are vulnerable to alcohol consumption and related harm, which includes the influence of the external environment (physical and social) on current drinking attitudes, behaviours, and related harms.
76. Exposure of children to alcohol related prompts has a cumulative effect which increases the likelihood of underage drinking and consuming larger amounts of alcohol. Alcohol use, especially when initiated at a young age, elevates the risk of many physical, social, and mental health problems.
77. Evidence relied upon in the Primary Submissions demonstrates the extent of alcohol related harms experienced by children and young people. Young people are particularly vulnerable to the impacts of alcohol advertising as they lack the skills necessary to understand the fictions and biases inherent in advertising portrayals.
78. The more readily available alcohol is at Curtin University, the higher the risk of additional alcohol related harm and illness. Availability of alcohol and promotion of alcohol is a factor that contributes to a culture of drinking among young university students.

79. Packaged liquor presents a particular risk given that it is consumed in domestic environments that are less regulated than drinking that occurs at venues or in public.
80. Notably, availability of alcohol next to a supermarket may convey the message that alcohol is an 'ordinary commodity' with no particular risks.
81. International research has found that consumption of specific alcohol products increases when these products are sold within supermarkets.
82. While the Respondent's Liquor Store Licence will not integrate alcohol sales within the supermarket, it is reasonable to suggest that research regarding the integration of alcohol sales in supermarkets provides an indication of the increase in sales when the businesses are proximate. Therefore, having a Liquor Store on campus, particularly one next to a supermarket, is likely to increase the amount of alcohol that students (and others) who live on or near campus consume and therefore increases the risk of the harms outlined in [71] and [74 to 81] in this Determination.
83. Promotion of alcohol is a factor that contributes to a culture of drinking among young university students. Advertisements may impact young people across all their alcohol related decisions, including when to start drinking, what to drink, how much to drink, where and with whom to drink, and how to think and feel about alcohol.
84. Exposure to alcohol advertising leads to alcohol consumption in young people, including children.
85. In respect to the restrictions on promotional material, the Intervenor states as follows:
- a) *The Applicant wishes to prohibit advertising within student accommodation and marketing targeted directly to students.*
 - b) *The Intervenor's primary concern reflected in its advertising harm minimisation recommendations is the need to ensure that children were not exposed to advertising, as is ensured by Trading Condition 8. This condition should, at the very least, be maintained. In particular, it will ensure that young children are not exposed to liquor related advertising on their way to or from childcare services, thereby reducing their cumulative exposure and risk of harm.*
 - c) *The additional limitations sought by the Applicant would serve to further minimise the risk of harm to students, who are also vulnerable to promotional material.*
 - d) *In relation to advertisements within student accommodation, this will increase the extent to which students are consistently exposed to advertisements about alcohol, who have a high prevalence of harmful drinking, further normalising the drinking culture.*
 - e) *In relation to targeted advertisements, direct advertising creates the additional issue that it may "fly under the radar" as these forms of advertising are separate from the more traditional, and more closely monitored, forms of advertising and promotion.*
86. The Intervenor asserts that students, children and members of the public will be exposed to an unnecessary risk of harm unless the conditions imposed by the Director' Delegate in the Decision are maintained.

87. The Intervenor submits that if the Commission is minded to vary the Decision (*viz.* in particular the Trading Conditions), the following variations would further minimise the risk of harm to the public:
- a) Trading Condition 2 is amended to allow the purchase of only one 750 ml bottle of wine per day;
 - b) Trading Condition 2 is amended to clarify that the bottle of spirits or liqueur which may be purchased should not exceed 700 ml in size;
 - c) Trading Condition 8 is amended to include a prohibition against promotions within student accommodation on the Curtin University, Bentley campus; and
 - d) Trading Condition 8 is amended to include a prohibition against any direct marketing activities targeting students residing in on-campus student accommodation on the Curtin University, Bentley campus.

Determination


88. Without derogating from that general discretion, the licensing authority (this Commission) may impose conditions which it considers to be in the public interest or which it considers desirable in order to meet one of the objectives set out in section 64(3) of the Act, which includes, relevantly:
- a) ensuring that the safety, health or welfare of persons who may resort to the licensed premises is not at risk;
 - b) ensuring that liquor is sold and consumed in a responsible manner;
 - c) minimising the harm or ill-health caused to people, or any group of people, due to the use of liquor;
 - d) limiting the manner or the containers or the number or types of containers in which liquor may be sold;
 - e) limiting the days on which, and the times at which, liquor may be sold; and
 - f) prohibiting any practices which encourage irresponsible drinking.
89. When the Commission weighs and balances all of the competing factors, the Commission is not satisfied that the Trading Conditions in their current form as set out in the Decision satisfactorily promote the public interest.
90. Accordingly, the Decision of the Delegate is affirmed and the Liquor Store Licence is granted subject to the following changes to the Trading Conditions:
- a) Trading Condition 2 to be amended to read as follows
 - 2. *The licensee shall not sell more than the following quantities and types of liquor per person per day:*
 - (a) *six cans/stubbies of beer or cider; or*
 - (b) *six cans/stubbies of ready-to-drink (RTD); or*

- (c) 1.5 litres of wine (i.e., two bottles or 1.5 litre cask); or
- (d) 0.7 litre of spirits; or
- (e) 0.7 litre of liqueur.

b) Trading Condition 8 to be amended to read as follows:

There is to be no advertising of liquor products or other promotion of liquor:

- (i) *on the external façade of the licensed premises; or*
- (ii) *by A-frames, billboards, or other mediums within the vicinity of the licensed premises, anywhere on campus that is visible from child focused services, and in key travel corridors utilised to access child focused services in the Exchange Precinct;*
- (iii) *within student accommodation on the Curtin University, Bentley Campus; or*
- (iv) *by any direct marketing activities targeting students residing in on-campus student accommodation on the Curtin University, Bentley Campus. Direct marketing activities include but are not limited to, the targeted sending of promotional materials, advertisements, or offers via sms, email, mail, phone calls, social media, influencers or any other means of communication directly to students.*


JARED BROTHERSTON
PRESIDING MEMBER
TONY DI FRANCESCO
MEMBER
PAUL SHANAHAN
MEMBER