

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Maniax Melbourne CBD Pty Ltd for an internal review of a decision by a delegate to refuse an application for variation of an on-premises licence, for the premises located at 121 Elizabeth Street, Melbourne, Victoria.

Commission: Ms Danielle Huntersmith, Chair
Mr James O'Halloran, Deputy Chair
Mr Steven Brnovic, Commissioner
Ms Thu-Trang Tran, Commissioner

Appearances: Mr Daniel Robinson, Counsel for Maniax Melbourne Pty Ltd
Mr Michael Majewski, Counsel Assisting the Commission

Date of Hearing: 23 November 2023

Date of Decision: 3 April 2024

Date of Reasons: 3 April 2024

Decision: The Commission has determined to affirm the decision of the delegate and refuse the application.

Signed:



James O'Halloran
Deputy Chair

Background

The Original Application

1. Maniax Melbourne CBD Pty Ltd (**Applicant**) operates a recreational axe-throwing venue with bar and food facilities at 121 Elizabeth Street, Melbourne 3000, trading as Maniax Melbourne CBD (**Premises**). The Applicant is part of a corporate group of entities that operate axe-throwing venues across Australia (**Maniax Group**).¹
2. The Applicant holds a current a liquor licence (On-Premises Licence no. 32365595) (**Licence**), which contains the special conditions (**Special Conditions**) including but not limited to:
 - *The licensee must ensure that any person participating in axe throwing is not affected by alcohol.*
 - *Liquor may only be supplied to spectators or patrons who are not involved in axe throwing or who have completed their involvement in axe throwing.*
 - *No throwing to be conducted without the presence of a lane supervisor who holds a current RSA² qualification.*
 - *The licensee shall install and maintain a surveillance recording system able to identify individuals, which shows time and date and provides continuous images of all entrances, exits, bars and axe throwing cages.*
 - *Signs as described below, are to be displayed in all areas subject to camera surveillance. Such signs shall read: 'Liquor will only be supplied to patrons who are not participating in axe throwing or who have finished axe throwing.'*
 - *Signs as described below, are to be displayed in all axe throwing cages. Such signs shall read:*

"For the safety of all patrons and staff, all persons participating in axe throwing must be unaffected by alcohol. Any person participating in axe throwing found to be under the influence of alcohol, will result in their immediate exclusion from further axe throwing."
3. The central recreational activity at the Premises involves throwing axes at wooden targets marked with concentric circles in delineated axe throwing lanes. The aim is to hit the bullseye, or as close as possible.

¹ Venues in Adelaide, Brisbane, Perth, Sydney, Gold Coast and Melbourne.

² Responsible Service of Alcohol.

4. The Premises consists of one area with twelve single lanes, and another area with five double lanes. No alcohol is permitted within the lanes, and the perimeters of all the lanes do not fall within the licensed area of the Premises.
5. Each lane has a wire-fenced enclosure on its sides, making them similar in construction to cricket nets. Each lane also has a clearly marked line from which participants must throw their axe, where the distance between the marked line and the target is approximately four metres. In addition:
 - a) **Single lanes area:** every entry point into a single lane has a waist-high safety barrier, approximately one metre behind the throwing line. This barrier separates the axe-thrower from patrons in the adjoining licensed premises, and there is a long bar table for patrons located approximately one metre behind the barrier; and
 - b) **Double lanes area:** there is no barrier at the entry point of each of the double lanes. There are several long bar tables within the adjoining licensed premises, where patrons can stand and observe. The distance from the throwing line and the long bar tables is approximately four metres.
6. On 22 December 2022, the Applicant, through its legal representatives, BSP Lawyers (**BSP**), applied to the Victorian Liquor Commission (**Commission**) under the *Liquor Control Reform Act 1998 (LCR Act)*³ to vary the Special Conditions on the Licence (**Original Application**).
7. The Applicant requested the amendments to the following effect:
 - a) Remove the prohibition on the supply of liquor to persons participating in or yet to participate in axe throwing;
 - b) Change the wording of the Special Conditions to impose a maximum of three drinks during a two-hour session of axe throwing; and
 - c) Change of language from 'affected' to 'impaired' in the wording of the Special Conditions.
8. The Applicant provided their proposed changes to the wording of the Special Conditions as follows (**Proposed Special Conditions**):
 - *The licensee must ensure that any person participating in axe throwing is not ~~affected~~ impaired by alcohol.*
 - ~~*Liquor may only be supplied to spectators or patrons who are not involved in axe throwing or who have completed their involvement in axe throwing.*~~
 - *Patrons involved in axe throwing must not be supplied with more than three (3) drinks at the premises from the time of entry until they have completed their involvement in axe throwing.*

³ All references to legislation are references to the LCR Act unless stated otherwise.

- Signs as described below, are to be displayed in all areas subject to camera surveillance. Such signs shall read:

“For the safety and security of patrons and staff, this area is under electronic surveillance.”

~~“Liquor will only be supplied to patrons who are not participating in axe throwing or who have finished axe throwing.”~~

- Signs, as described below, are to be displayed in all axe throwing cages. Such signs shall read:

“For the safety of all patrons and staff, all persons participating in axe throwing must be ~~unaffected~~ ~~unimpaired~~ by alcohol.”

9. In the accompanying supporting statement, the Applicant provided that the Proposed Special Conditions sought in this application are modelled on the operation of the Maniax Newstead premises in Queensland, where “there is no prohibition on the supply of liquor prior to or during axe throwing activities”.

10. In support of the Original Application, BSP provided the Delegate copies of the following from the Premises:

- a) A proposed version of the Introduction and Safety Brief Sheet (**Safety Briefing**), which highlights and educates participants on the following –
 - i. The handling of axes, including not passing an axe to another person;
 - ii. How to properly throw and retrieve axes, with guidelines to prevent accidents, such as not catching, stopping, or kicking a bounced-back axe; and
 - iii. That alcohol is prohibited in the axe-throwing lanes.
- b) A Staff Training Register that provides a comprehensive workplace health and safety checklist.
- c) A ‘MANIAX Melbourne CBD Participant Agreement’ (**Participant Agreement**) that participants must agree to before participating in axe throwing. The Participant Agreement asks participants to acknowledge that there are significant risks of serious injury or death in use of its services, and contains a waiver for participants to release the Applicant from liability arising from those risks.
- d) Various emails to demonstrate how staff have managed instances of denying entry to people suspected of being affected by alcohol.

11. Pursuant to section 33A, a copy of the Original Application was served on the Chief Commissioner of Police (**Victoria Police**) and on the Melbourne City Council (**Council**). Victoria Police and the Council informed the Commission that there are no objections to the Original Application.
12. On 16 January 2023, a delegate of the Commission (**Delegate**) requested that BSP provide a submission addressing the following areas in relation to the Original Application:
 - a) Why was it considered appropriate for patrons to be able to drink prior to throwing weapons?
 - b) How was it concluded that the proposed 'three drinks limit' (**Three Drinks Limit**) was a reasonable limit?
 - c) How had the Applicant considered that this limit was enforceable, given that liquor can affect people differently?
13. The Delegate also advised BSP that, given the LCR Act uses the term 'affected' in relation to intoxicated patrons, substituting the term 'impaired' for 'affected' would not be appropriate.⁴
14. On 20 February 2023 and 5 July 2023, BSP made further submissions to the Delegate in response to the information request.

Applicant's submissions in relation to drinking alcohol prior to and while axe throwing

15. BSP submitted that the axe-throwing activity conducted at its venues is a professional standard sporting activity comparable to other recreational activities in pubs and bars, like darts. BSP also provided to the Delegate a copy of a health and safety report prepared by EHS Partnerships Ltd, dated 24 March 2016 (**EHS Report**), relating to an axe-throwing venue in Canada. The venue is operated by the Backyard Axe Throwing League (**BATL**) Group and supplies liquor for on-premises consumption. The report advised that:
 - a) Maniax Group's safety procedures were modelled on the Backyard Axe Throwing League which is active across 11 venues in Canada since 2010;
 - b) The focus of the review is on the hazards and risk controls at the facility in Calgary. It was concluded that the risk of injury at the facility is low and comparable to other recreational activities, such as golf or skiing; and

⁴ The Commission notes section 3AB(1), provides that a person is in a state of intoxication if his or her speech, balance, co-ordination, or behaviour is noticeably **affected** and there are reasonable grounds for believing that this is the result of the consumption of liquor.

- c) The consumption of alcohol is “an additional risk consideration”⁵ and the report concluded that responsible drinking with strict adherence to safety protocols and careful oversight and supervision by staff to maintain control are key to managing the inherent and incremental risks.⁶

16. BSP submitted that, while it concerned a different venue, the EHS Report demonstrated axe throwing to be a low-risk activity that is not unduly affected by responsible consumption of alcohol. Also, by permitting consumption of limited quantities of liquor on the Premises prior to and during axe-throwing activities, this may reduce the incentive for patrons to drink elsewhere beforehand, therefore mitigating the risk of excessive pre-drinking.

Applicant’s submissions in relation to the reasonableness and enforceability of the Three Drinks Limit as a risk mitigation measure

17. BSP submitted that the Maniax Group’s Queensland venues in Brisbane (Newstead) and Gold Coast successfully operationalised a model where there is supply of liquor for consumption by axe-throwing participants but limited to three drinks per participant.
18. BSP submitted that the Three Drinks Limit is intended to be enforced through a wristband system, where bar staff mark wristbands when participants order their own drinks. BSP notably acknowledged, however, that a number of the venues in New South Wales, South Australia and Western Australia do not contain conditions that allow for liquor to be supplied to patrons prior to or during axe throwing.
19. BSP also submitted that, notwithstanding the Three Drinks Limit, the Applicant would ensure that patrons are monitored for signs of intoxication and refused service in accordance with responsible service of alcohol (**RSA**) requirements.

Original decision

20. On 2 August 2023, the Delegate refused the Original Application pursuant to subsection 44(2)(b)(ii) (**Original Decision**). In summary, the Delegate was of the view that axe throwing is a dangerous activity, and the request to allow the supply of liquor to participants during that activity was not in line with the LCR Act’s object of harm minimisation.

⁵ EHS Report, p8.

⁶ The safety protocols that the EHS Report refers to include: throwing lanes divided into separate areas with barriers; the hatchets used are standardised in size and design, with the cutting edges intentionally dulled to prevent injury; the targets and surrounding areas are lined with energy-absorbing materials to reduce the risk of bounce-back; guests go through safety procedures and are given individual training in hatchet-throwing techniques; and instructors closely supervise activities to ensure adherence with safety rules.

21. Relevantly, the Delegate stated that, whilst the Applicant has put in significant effort to reduce harms relating to this activity, “the strictures preventing alcohol prior to throwing is, in my opinion, a large part of this harm minimisation”, and that “whilst the Applicant may not have history of supplying intoxicated patrons, and therefore has good compliance history, I am not satisfied that is it in the interest of community safety to allow people, who may or may not show signs of intoxication clearly.”

Application for Internal Review

22. On 15 August 2023, the Applicant applied to the Commission for review of the Original Decision (**Review Application**).

23. On 13 October 2023, the Commission⁷ attended the Premises, where the Applicant company’s staff provided a demonstration of the Safety Briefing.

24. On 17 November 2023, BSP provided the following witness statements (with accompanying attachments) on behalf of the Applicant company:

- a) Witness Statement of Megan Waters, Chief Operating Officer (**COO**) of the Applicant company;
- b) Witness Statement of Melanie Bow, Venue Area Manager of the Applicant company; and
- c) Witness Statement of Phillip Dobbie, the former venue manager of a Maniax premises in Sydney until the commencement of his role at Maniax Newcastle, New South Wales in October 2023.

25. Collectively, the statements describe their respective responsibilities for daily operations, compliance, staff training, maintenance at the venues, patron management, safety protocols and management, and the wristband method for monitoring and limiting alcohol consumption among patrons. Accompanying attachments included a copy of the Maniax Newcastle liquor licence, a menu (with food, drinks, and merchandise for purchase), and posters of promotions.

26. The various witness statements also outlined the rationale of the Proposed Special Conditions and how in various Maniax venues, similar conditions are applied or were viewed by patrons. In summary, in the witness statements:

- a) Ms Waters stated that patrons have expressed disappointment due to restrictions on drinking while axe throwing;

⁷ Commissioners Ms Danielle Huntersmith, Mr James O’Halloran, Mr Steven Brnovic; and Counsel Assisting the Commission, Mr Michael Majewski.

- b) Ms Bow stated that based on feedback received from patrons, the Applicant's preference would be to adopt the Three Drinks Limit during axe throwing that is enforced through a wristband monitoring system;
- c) Mr Dobbie stated that Maniax Newcastle is permitted to supply liquor to customers prior to axe throwing, and it is the venue's policy that only three drinks are permitted during axe throwing; and
- d) It was explained that Maniax Newcastle employs a wristband method for monitoring and limiting alcohol consumption among patrons. Wristbands are used to identify patrons as adults, minors, adult spectators, or minor spectators. This system allows bar staff to remain aware of the relevant drinking policies that apply to each of the patrons. Once the wristband has been marked with an 'X' for each of the three alcoholic drinks, the patron is given the choice to either stop drinking and continue axe throwing, or to continue drinking and stop throwing.

27. The Commission notes that the enclosed copy of the liquor licence for Maniax Newcastle (accompanying Mr Dobbie's statement) does not have any conditions prohibiting the supply of liquor to patrons either before or during participating in axe throwing.

28. On 22 November 2023, BSP provided a submission prepared by Daniel Robinson, Counsel for the Applicant (**Pre-Hearing Submission**). Mr Robinson submitted that (in summary):

- a) alcohol consumption is ancillary to the main activity offered at the Premises, in this case, axe throwing;
- b) the Review Application seeks to modify the existing licence conditions to allow a limited supply of alcohol to patrons during an axe-throwing session, similar to the practice in Maniax Newcastle and Maniax Group's venues in Queensland;
- c) the proposed change aims to align with the fact that alcohol is an ancillary part of the patron experience, not the primary focus; and
- d) the intuitive perception of risk associated with axe throwing differs from the actual risk, especially in a controlled environment like that provided on the Premises. The safety of recreational axe throwing, even with limited alcohol consumption, is well established, as demonstrated by the Maniax Group's experience in other venues and by the BATL Group venues in Canada.

Legislation and the Commission's task

The Commission's internal review power

29. Division 2 of Part 9 governs internal review applications. Under section 152, the Original Decision is a reviewable decision, and the Applicant is eligible to apply for the review of that decision. The Review Application was made pursuant to section 153.

30. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Application is to make a fresh decision that:

- a) affirms or varies the reviewable decision; or
- b) sets aside the reviewable decision and substitutes another decision that the Commission on review considers appropriate.⁸

31. Under the LCR Act, an application for variation of an on-premises licence may be contested or uncontested. Pursuant to section 3(1), an uncontested application is defined as:

An application for the grant, variation, transfer or relocation of a licence or BYO permit in respect of which no objection is received under Division 5 of Part 2 within the period set out in that Division for that objection (or that period as extended under section 174).

32. The Original Application was uncontested as no objections were received under Division 5 of Part 2 within the period set out in that Division (or that period as extended under section 174).

33. In effect, the Commission on review stands in the shoes of the original decision maker and must make a fresh decision with respect to the Original Application. In this case, the Commission either has to:

- a) grant the Original Application and, if so, whether to do so subject to conditions;⁹ or
- b) refuse to grant the Original Application.¹⁰

Determination of an uncontested application

34. Where an application is an uncontested application, pursuant to section 44(1):

Subject to Division 3, the Commission must grant or refuse to grant an uncontested application at any time after the expiry of the period for objection under Division 5 (or that period as extended under section 174).

⁸ Section 157(2) to (5) further prescribe the manner in which the Commission is to undertake internal reviews.

⁹ Sections 44, 49 and 157.

¹⁰ Sections 44 and 157.

35. Section 44(2) empowers the Commission to refuse to grant the Review Application on various grounds, including that granting of the application would be conducive to or encourage harm.¹¹

Conduct of an Inquiry

36. Section 44(4) provides that the Commission may have regard to any matter the Commission considers relevant and make any enquiries the Commission considers appropriate.

37. Section 172W(3) provides that the Commission is not bound by the rules of evidence but may inform itself in any way it thinks fit and is bound the rules of natural justice.

Exercising the internal review power

38. Sections 172D(3) and 172U(3)(b) require the Commission, in exercising its internal review function, to have regard to the objects of the LCR Act and any decision-making guidelines in respect of the regulation of liquor issued by the Minister. The objects of the LCR Act are set out at section 4(1):

(a) to contribute to minimising harm including by—

(i) providing adequate controls over the supply and consumption of liquor; and

(ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and

(iii) restricting the supply of certain other alcoholic products; and

(iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and

(b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and

(c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and

(d) to regulate licensed premises that provide sexually explicit entertainment.

¹¹ Section 44(2)(b)(ii).

39. Section 4(2) further provides that:

*It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation.*¹²

40. Section 3(1) defines harm as follows:

harm arising from the misuse and abuse of alcohol, including—

- (a) harm to minors, vulnerable persons or communities, including groups within communities; and*
- (b) family violence; and*
- (c) anti-social behaviour, including behaviour that causes personal injury or property damage.*

41. The Commission considers that, while the grounds of refusal outlined in section 44(2) are relevant considerations, the determination of an uncontested application was ultimately to be made pursuant to section 44(1) and section 157(1) at the discretion of the Commission, with reference to the objects of the LCR Act.

Material before the Commission

42. The Commission on review had before it and considered all the materials before the Delegate. Further, the Commission on review also received and considered the following:

- a) the Original Decision and reasons for the Original Decision dated 2 August 2023;
- b) the Review Application dated 15 August 2023;
- c) information received during the Commissioners' site visit on 13 October 2023;
- d) written witness statements of Ms Waters, Ms Bow and Mr Dobbie provided to the Commission on 17 November 2023;
- e) the Pre-Hearing Submission dated 22 November 2023;
- f) evidence and submissions given at the public hearing on 23 November 2023; and
- g) supplementary submissions of Mr Robinson, Counsel for the Applicant, dated 30 November 2023.

¹² See further *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325, which confirms that harm minimisation is the primary regulatory object of the LCR Act and therefore the primary consideration in liquor licensing decisions (although not to the exclusion of the other objects).

Hearing

43. On 23 November 2023, the Commission held a hearing into the Review Application (**Hearing**).
44. Mr Robinson appeared for the Applicant, and Ms Waters, Ms Bow, and Mr Dobbie gave evidence on behalf of the Applicant.
45. The Commission was invited to give careful, proper, and thoughtful consideration to the risk of harm that arises from axe throwing. Mr Robinson submitted that the determination of the Review Application hinges on a risk assessment, distinguishing between perceived and actual risks. He used the example of air travel to illustrate how a highly regulated activity can be perceived as risky despite being statistically safe. In addition, Mr Robinson emphasised the controlled environment of the Premises, including physical controls (e.g., setup of the axe-throwing area) and behavioural controls (e.g., enforced safety practices). He argued that such controls are effective and crucial for the safe operation of Maniax Group's venues, accommodating even those with no prior experience or special skills in axe throwing.
46. Mr Robinson submitted the consumption of a limited amount of alcohol does not fundamentally alter the safety of axe throwing due to the robust nature of the controls on the Premises.
47. In response to the Commission's queries about axes being perceived as weapons, Mr Robinson submitted that axes are primarily tools and their use in sports is traditional. He acknowledged the potential risk of any object that could be used as a weapon in a venue but argued that the probability of such an incident is very low and would not significantly change with the consumption of a small amount of alcohol.
48. Mr Robinson also argued that the risks of axe throwing are manageable in a regulated environment, placing it between bowling and shooting in terms of risk level. He emphasised that axe throwing, unlike shooting, requires a conscious action and is less inherently risky.

Evidence given at the Hearing

Evidence of Megan Waters

49. Ms Waters gave evidence in her capacity as the COO of the Applicant company.
50. Ms Waters stated that, much like the BATL Group venues in Canada (see paragraph 15 above), the Applicant's venues conform to the standards of the International Axe Throwing Federation. Some of the safety measures she highlighted included private lanes for larger groups (aka double lanes), single lanes for smaller groups (aka Quick Chuck lanes), specific safety measures like the

gauge of wires used in constructions of fencing for each of the lanes, and the use of blunted axes. Additionally, she discussed the regular reliance on online platforms for safety management.

51. In terms of supervision of axe throwers, Ms Waters gave evidence to the following effect:

- a) Before participating, patrons receive safety briefings from supervising staff, known as 'Axperts'. These briefings cover essential safety protocols, axe handling techniques, and the rules of the activity;
- b) Axperts closely monitor patrons during the axe throwing sessions. They are present to observe the activities, provide guidance, correct techniques if necessary, and ensure that all safety rules are being followed. This supervision is continuous throughout the session; and
- c) The number of Axperts or staff assigned for supervision varies depending on the size of the group and the type of lanes being used –
 - i. For Quick Chuck lanes, which cater to smaller groups or individuals, Axperts walk up and down the lanes to oversee the area, ensuring each participant follows safety protocols and receives adequate guidance; and
 - ii. In the case of double lanes, where more participants are involved, an Axpert is positioned centrally between the lanes to provide enhanced supervision.

52. Ms Waters stated that the Premises is a venue that hosts corporate groups, families, and competitive axe-throwers. She added that the Premises allows axe throwing to young patrons between the ages of 11 and 18 if they have a guardian with them, and that such groups are sometimes composed of school trips.

53. When discussing the introduction of alcohol in the Applicant's venues, Ms Waters explained the proposed system of wristbands to monitor and limit alcohol consumption to three standard drinks per person. At those Applicant's venues which are licenced to supply liquor to patrons while participating in axe throwing, such as in Maniax Newcastle or the venues in Queensland:

- a) patrons are handed a wristband at their first drink which has one cross on it;
- b) those patrons are not allowed to come up to the bar and order alcohol for their friends;
- c) after the wristband is crossed off three times, if patrons wish to continue drinking, they are told to cease axe throwing;
- d) those patrons who have ceased axe throwing to continue drinking are given a hot pink wristband to indicate to staff that they are not allowed to pick up an axe; and

e) minors who participate in axe throwing are given a different coloured wristband to help indicate to staff their age group and that they are not allowed to order alcohol.¹³

54. Ms Waters gave evidence about how the Viking theme is a prominent part of the branding and marketing of the Applicant's venues. The Commission noted how the Viking motif is evident in various elements, from the décor to the naming of products and services, such as the 'Maniax' beer and the Viking drinking horn. Ms Waters also addressed concerns about the potential impact of marketing messages on customer behaviour, particularly in relation to alcohol consumption. She acknowledged that some promotional materials, like the phrase 'Fuel your throw' used in conjunction with drink offers, might need reconsideration to ensure they do not inadvertently encourage irresponsible behaviour.

55. In terms of the nature of axes as potential weapons, their inherent risks, and the rationale behind selling axes at the venue, Ms Waters acknowledged that axes could be considered weapons in some contexts (for instance, by Vikings for hunting or combat), but in the venue's setting and safety protocols (e.g., blunting of axes used by patrons), she argued that they are primarily seen as tools for a recreational activity. She also stated that, while the axes are blunted to a degree that makes them safer, they are still effective for their intended use in the sport of axe throwing.

56. Ms Waters acknowledged that while axe throwing has inherent risks, she considered that the safety protocols and staff training at the Applicant's venues mitigate these risks effectively. She also admitted that alcohol can affect individuals differently and potentially elevate risks, but she expressed confidence in the staff's ability to manage these risks based on their experience in other locations where alcohol is served.

57. The Commission raised concerns about the potential for secondary supply of alcohol in a party atmosphere. In response, Ms Waters gave evidence about the measures that the Applicant has put in place at its other venues to manage and mitigate this risk, including:

- a) staff are trained to adhere to RSA guidelines, and this includes being vigilant about not serving alcohol to anyone who appears intoxicated or is likely to supply alcohol to others who are participating in axe throwing;
- b) patrons are required to purchase their own drinks; and
- c) the implementation of the wristband system to assist staff in closely monitoring the drinking of those patrons who are participating in axe throwing.

¹³ Transcript of the Hearing, page 22.

Evidence of Melanie Bow

58. Ms Bow gave evidence in her capacity as the Area Venue Manager of the Applicant company, including for the Premises.
59. In her evidence, Ms Bow made statements to the effect that, while ensuring safety and correct technique in axe throwing, staff also observe patrons for any signs of intoxication or unsafe behaviour. Staff initial interaction with patrons is used to check for any immediate signs of intoxication. This includes asking questions about any alcohol consumption prior to their arrival.
60. Ms Bow stated that the maximum capacity of the Premises is around 300 patrons. However, she noted that it typically reaches up to 150 patrons at peak times. This number varies based on the size of groups booking the lanes; for instance, some groups might consist of 16 people, while others could have 30 or more.
61. Regarding the staff-to-patron ratio during these peak times, Ms Bow detailed how each of the private lanes has one staff member assigned to it. In addition to these lane-specific staff members, the venue employs two people at the dry bar, two at the cocktail bar, up to four people managing the Quick Chuck lanes, two at the reception, and around two managers overseeing operations. The kitchen staff also contributes by assisting on the floor when necessary.
62. As for the staff composition, Ms Bow mentioned that the venue employs three permanent staff members, with the rest being casual employees, and that this structure allows for flexibility in managing the varying needs of the Premises, especially during busy periods or large events.
63. Ms Bow responded to the Commission's questions regarding the staffing and monitoring of the Quick Chuck lanes. She explained that the number of Axperts may vary depending on the day and the number of patrons. During slower periods, typically on weekdays, there might be just one staff member overseeing the lanes. In the event of an unexpected influx of patrons during a quieter period, additional staff from other areas, such as the bar or kitchen, would be available to assist in supervising the axe throwing lanes.
64. Ms Bow mentioned that the full food and beverage menu at the Premises is available at all times during operating hours. Regarding the seating and dining area adjacent to the kitchen, Ms Bow stated that this area is monitored by all staff, including kitchen personnel.
65. Ms Bow responded to the Commission's questions about patrons possibly consuming alcohol beyond their allowed limit, as tracked by wristbands, and then returning to the axe throwing activity. She acknowledged that staff at the Premises cannot control every action of patrons, but

expressed confidence that most patrons take these policies seriously and are primarily there to engage in the sport of axe throwing in a responsible manner.

Evidence of Phillip Dobbie

66. Mr Dobbie gave evidence in his capacity as the previous manager of Maniax Newcastle.
67. Mr Dobbie detailed his career progression, starting as a casual Axpert in Sydney, where alcohol was not served during axe throwing activities, to becoming a floor manager and handling customer complaints, and finally transitioning to the role of venue manager in Newcastle.
68. Mr Dobbie clarified that while the Newcastle licence does not specifically mandate a three-drink limit, it was adopted as a house policy.
69. Mr Dobbie described the process for managing groups with varying access to alcohol. Upon arrival, patrons are required to check in and sign a waiver. Those intending to drink alcohol receive a specific wristband after verifying their age. This wristband system serves as the first line of control, helping staff ensure that guests adhere to the venue's alcohol policies. In Newcastle, the smaller venue size aids staff in continuously monitoring guests, ensuring compliance with house rules.
70. Mr Dobbie explained the venue's strict policy regarding patrons who have pre-consumed alcohol before arriving. According to the venue's policy, any patron suspected of drinking prior to their arrival is not allowed to participate in axe throwing.
71. Mr Dobbie discussed the management of alcohol consumption in relation to different session durations. For two-hour sessions, a maximum of three drinks is allowed, with a reduced limit for shorter sessions. He also noted that stronger drinks, such as cocktails and certain India pale ales, count as two drinks within this limit.
72. Regarding safety incidents, Mr Dobbie reported that most injuries at the venue were minor, such as splinters or small cuts, often resulting from patrons touching the splintered wood of targets. He emphasised that the axes used are blunted enough to stick into soft pine wood while minimising the risk of injury.

Issues for determination on review

73. The Commission's task is to review the Original Decision and arrive at a fresh decision on the application. In deciding whether to affirm, vary or set aside the Original Decision and in turn grant or refuse the Review Application, the Commission must determine whether granting the Review

Application would be conducive to or encourage harm for the purposes of section 44(2)(b)(ii) or be contrary to the objects of the LCR Act, in particular the object of harm minimisation.¹⁴

Whether granting the Review Application would be conducive to or encourage harm

74. Having regard to its functions under the LCR Act, the Commission considers that the primary issue to be determined by the Commission in this matter is whether drinking prior to and/or during axe throwing would be conducive to or encourage harm.

75. The Commission considers that there are three areas for specific examination:

- a) the level of risk involved in throwing axes at the Premises;
- b) the effects of allowing the supply of alcohol to axe throwers on the level of risk; and
- c) mitigation measures.

The level of risk involved in throwing axes at the Premises

76. The Commission considers that there are inherent risks in axe throwing. These are primarily related to the physical nature of the activity and the throwing of a weighty bladed object traditionally used as a weapon or a heavy cutting tool within a shared space.

77. The Commission notes that the Applicant requires participants to sign the Participant Agreement, which is a mandatory waiver before engaging in axe throwing. This document acknowledges the existence of a number of the risks involved in axe throwing and requires the prospective axe-thrower to accept that there are “[...] significant risks in my use of the services including but not limited to serious injury or death caused by myself or other participants”. In addition, various risks involved in axe throwing were acknowledged by Ms Waters (the COO) in her evidence including many of the risks set out below. However, it is noted that Ms Waters, whilst acknowledging the existence of risks involved in axe throwing, stated that they are sufficiently mitigated through the actions of the staff: “There are risks there, but I think we mitigate them through our safety briefing and through our staff knowing what they’re doing”.¹⁵

78. The Commission considers, from the information before it that there is an existing level of risk of injury arising from the operation of the Premises including axe throwing. Examples of some areas of risk of harm are set out below.

¹⁴ LCR Act, sections 4 and 172D(3). The Commission notes that, in determining this matter, it has also considered each of the grounds set out in section 44(2).

¹⁵ Transcript of the Hearing, page 31, line 10.

79. There are risks of an axe cutting someone either accidentally or intentionally. The Commission asked Ms Waters about the blunting of axes. Ms Waters acknowledged that, while blunted, the axes were still sharp enough to cut. She also said that:

- a) The axes that are offered for sale (on the menu) at the Premises are not blunted and are the same as the axes you can purchase at Bunnings and other hardware stores.¹⁶ Ms Waters explained that patrons can use these axes purchased at the Premises for axe throwing at the Premises; and
- b) Ms Waters also explained that league members use axes at the Premises which are not blunted.¹⁷

80. The Commission considers that the ability of patrons to use non-blunted axes when participating in axe throwing adds to the inherent risk of the activity.

81. Another identified risk is of an axe rebounding off the target (bounce backs). Both the Safety Briefing and Ms Waters in her evidence described the risk of the axe not lodging in the wall at which it is thrown and the need for the axe thrower to step/jump out of the way to avoid the axe landing on them.¹⁸

82. Another risk identified is of an axe accidentally slipping out of an axe thrower's hands, for example, when swung above their head in a backward motion (as part of the technique taught to throw the axe in the Safety Briefing).¹⁹

83. The Commission considers there is also a more generalised risk of an axe being thrown, dropped or otherwise misused by a patron.

84. The Commission notes that the axe-throwing areas/cages are not entirely closed. Whilst the sides of the throwing lanes are very highly fenced, the rear part of the throwing lanes only have a low (approx. 1 metre high) gate and some are not fenced at all at the back and people can sit and drink and watch the participants from tables that are extremely close to the back of the throwing lanes (see paragraph 5 above). Accordingly, the close proximity of axe-throwing areas to the general 'bar' area and tables where patrons will be congregating contributes to the inherent risks.

The effect of the supply of alcohol to axe throwers on the level of risk

85. The Commission notes that it is widely accepted that alcohol has a physiological effect on the drinker. Its consumption affects reaction times. It can lead to slower responses, delayed reflexes,

¹⁶ Transcript of the Hearing, page 20, line 16.

¹⁷ Transcript of the Hearing, pages 50-53.

¹⁸ Transcript of the Hearing, pages 32-33.

¹⁹ Transcript of the Hearing, page 33, lines 5-16.

poorer hand-eye coordination, divided attention and potentially impaired judgment. Further, if taken in combination with certain types of medication, the risk is greater.

86. Importantly, a person may be affected by alcohol after even a small volume. Alcohol affects different people differently depending on a number of factors (such as weight, proximity to meals, how much water has been consumed).
87. As set out above, there are inherent risks involved in axe throwing. Specifically in this matter, an axe is being thrown in confined areas, close to other people, and where there is a risk of bounce-back, dropping or misuse. The introduction of alcohol for axe throwers leads to an increased risk of harm and may lead to more serious consequences. A patron with alcohol in their system could unpredictably alter their behaviour whilst handling a potentially dangerous weighty, bladed object and increase the risk of harm and injury to themselves and others.
88. Ms Waters acknowledged at the Hearing that putting alcohol together with a risky activity can elevate risks and that there are risks involved when a person wields an axe.²⁰ However, she did not consider that putting axe throwing together with alcohol elevates risk. In response to the Commission's query as to whether she accepted that one drink could be sufficient to "take someone over the safe stage [of being allowed to participate in axe throwing]", Ms Waters replied in the affirmative.²¹
89. When alcohol is available around or consumed beforehand or during axe-throwing activities, the risks of harm are exacerbated. The Commission considers that consumption of liquor prior to and during throwing axes significantly exacerbates the already elevated risks of harm.

Mitigation measures

90. The Commission notes that the Applicant has made submissions about its experience in operating multiple licensed axe-throwing venues since 2014. The Commission accepts its strong compliance history, with no record of serious incident or injury at axe-throwing venues operated by the Maniax Group.²²
91. The Applicant provided information to the Commission about measures currently taken by the Applicant to mitigate the risks involved in axe throwing at the Premises and to give effect to the existing Special Conditions on the Licence (i.e. not supply alcohol to people before or during axe

²⁰ Transcript of the Hearing, page 49, lines 11-15.

²¹ Transcript of the Hearing, page 49, lines 35-45.

²² The Commission also notes (per paragraph 11 above) that Victoria Police did not raise any concerns with regard to the Original Application.

throwing) and about the additional measures it would implement if the Licence was varied to the Proposed Special Conditions (i.e. permit it to supply alcohol to axe throwers).

92. The Commission notes that Applicant's operating model contains detailed safety and risk management systems and practices around axe throwing at the Premises. These systems and practices seek to manage the inherent risks associated with throwing axes. These include patrons signing a Participant Agreement and receiving safety briefings from lane supervisors, who also monitor patrons during the axe-throwing sessions. The axes generally provided to participants are blunted (albeit, not to the point that the axes cannot penetrate the target). However, it is noted that not all axes used by participants are blunted as some bring their own (see paragraph 79 above).
93. The Commission accepts Ms Water's, Ms Bow's and other evidence in relation to the practices and procedures currently in place that mitigate the risks of axe throwing including ensuring that people have not had a drink before they participate in axe throwing (as attested to in the current Participant Agreement) and ensuring each participant has had a safety briefing, is supervised and does not consume any alcohol until after they have finished axe throwing.
94. The Commission accepts that the risks of harm are currently sufficiently mitigated by the measures in place at the Premises with the existence of the existing Special Conditions that alcohol cannot be supplied to any person before or whilst axe throwing.
95. However, the Commission considers, as discussed above, that risks are significantly elevated where axe throwing occurs after or while alcohol is being consumed.
96. The Commission heard evidence at the Hearing about how the Applicant intended to mitigate the risks of drinking alcohol prior to and during axe throwing, if the Commission were to grant the application and vary the existing Special Condition to the Proposed Special Conditions.
97. Mr Dobbie, who was previously the venue manager at Maniax in Newcastle, gave evidence about how Maniax managed a venue where alcohol was allowed to be served to axe throwers. Mr Dobbie described the process at Maniax Newcastle for managing groups with varying access to alcohol. Upon arrival, patrons are required to check in and sign a waiver.²³ Those intending to drink alcohol receive a specific wristband after verifying their age. This wristband system serves as the first line of control, helping staff ensure that guests adhere to the venue's alcohol policies.²⁴ The smaller venue size²⁵ aids staff in continuously monitoring guests, ensuring compliance with house rules.

²³ Transcript of the Hearing, page 84.

²⁴ Transcript of the Hearing, pages 88-89.

²⁵ Three double lanes and six single lanes.

98. Mr Dobbie also discussed the management of alcohol consumption in relation to different session durations. For two-hour sessions, a maximum of three drinks is allowed, with a reduced limit for shorter sessions. He also noted that stronger drinks, such as cocktails and certain beers, count as two drinks within this limit.²⁶
99. The Commission considers it relevant that, as stated by Mr Dobbie in his evidence, the Newcastle premises is approximately a quarter of the size of the Sydney (Marrickville) premises.²⁷ Mr Dobbie explained that the Newcastle premises, being much smaller, is also very open and allows for a line of sight and greater visibility of all patrons at all times, and that the Sydney (Marrickville) premises, being a much bigger premises, is restricted to supplying alcohol only to non-axe throwers or after axe throwing has concluded. The Commission notes that the Premises (in Melbourne) is similar in size to the larger Sydney (Marrickville) one, with 17 throwing lanes in each, and Sydney (Marrickville) has a capacity of 350, and the Premises (Melbourne) has a capacity of 300. This is compared to the smaller operations at Newcastle (three double lanes, six single lanes) as stated in Mr Dobbie in his evidence at the Hearing.²⁸
100. When discussing the introduction of alcohol in the Applicant's venues and the operation of the Three Drinks Limit, Ms Waters explained the proposed system of wristbands to monitor and limit alcohol consumption to three standard drinks per person (see paragraph 53 above).
101. Ms Waters expressed confidence in the staff's ability to manage the risks of supplying alcohol to patrons. In addition, Ms Bow stated that while ensuring safety and correct technique in axe throwing, staff are also trained to observe patrons for any signs of intoxication or unsafe behaviour in accordance with RSA guidelines.
102. In response to queries about the challenges of operating in busy periods, Ms Bow stated that the Premises typically reaches up to 150 patrons²⁹ at peak times. Regarding the staff-to-patron ratio³⁰ during these peak times, Ms Bow detailed how each of the private lanes has one staff member assigned to it. In addition to these lane-specific staff members, the venue employs two people at the dry bar, two at the cocktail bar, up to four people managing the single lanes area, two at the reception, and around two managers overseeing operations. The kitchen staff also contributes by assisting on the floor when necessary.

²⁶ Transcript of the Hearing, pages 81-82.

²⁷ Transcript of the Hearing, page 90, line 40.

²⁸ Transcript of the Hearing, pages 89-90.

²⁹ The venue has a maximum capacity of 300 patrons under its Licence and planning permit.

³⁰ The Maniax Group's venues (including the Premises) have a staffing ratio of axe-throwing lane supervisors of one staff member to 15 participants. Based on the materials provided to date, the Commission understands that the lane supervisors are also known as axe throwing coaches or 'Axe-perts', and that their role is to give patrons safety briefings and demonstrations in axe throwing, as well monitoring patron behaviour during an axe-throwing session.

103. Ms Bow responded to the Commission's questions about patrons possibly consuming alcohol beyond their allowed limit, as tracked by wristbands, and then returning to the axe throwing activity. While she stated that it was the Applicant's intention to ensure that patrons only purchase drinks for themselves, she acknowledged that staff at the Premises cannot control every action of patrons.³¹ In addition, Ms Bow acknowledged that staff did not assess whether somebody can cope with another three drinks (e.g., for the purpose of assessing whether a patron could safely participate in axe throwing with a three-drinks limit).³²
104. While the Applicant has put forward various safety measures and controls, the Commission is of the view that these are not adequate in addressing the significant risks that may arise when alcohol is permitted to be consumed by patrons prior to and during axe throwing.
105. While staff may closely observe patrons who are axe throwing, the Commission is of the view that it would be challenging (if not impracticable) to monitor every individual at all times, or to prevent any intentional misuse of an axe by patrons. The Commission also notes that the Applicant's witnesses have themselves acknowledged that staff cannot control every action of the patrons on the Premises. While most patrons may follow the rules, it only takes a few or even one individual to create a dangerous situation, especially in a setting where people holding axes can consume alcohol.
106. The Commission considers that the supply of alcohol to people before and/or during axe throwing (even with a Three Drinks Limit) would elevate the risk of harm occurring to an unacceptable level, particularly in a venue with the capacity and the physical layout of the Premises, where the axe-throwing areas are very close to other congregational areas.
107. The Commission notes that the EHS Report provided to the Commission by the Applicant, supports the view that in Canada, risks inherent in axe throwing being paired with alcohol consumption could be minimised by following responsible service of alcohol principles and through adequate supervision. However, in the absence of cogent evidence about the legislative framework, operational guidelines or physical layout of the relevant premises in Canada, the Commission finds the report to be of limited probative value.
108. The risk factors discussed above that may be conducive to harm are, in the Commission's view, significantly heightened in circumstances where liquor is consumed prior to and during axe throwing.
109. The Commission is not persuaded that adequate mitigation measures can or will be put in place

³¹ Transcript of the Hearing, page 77, line 31.

³² Transcript of the Hearing, pages 70-71.

to minimise the risks of harm if alcohol is supplied to people before or during axe throwing, and thus concludes that granting the Review Application would be conducive to or encourage harm.

Whether to exercise discretion to grant or refuse the Review Application having regard to the objects of the LCR Act

110. Mr Robinson provided a further submission dated 30 November 2023 focusing on the compliance of the application with the objectives of the LCR Act. Notably (amongst other matters previously addressed), Mr Robinson highlighted:
- a) the low risk associated with alcohol misuse at the Premises, due to the ancillary role of alcohol in the overall patron experience and argued that the existing controls and RSA practices at the Premises have already proven effective in managing risks for non-participants in axe throwing;
 - b) that the application aligns with the development of diverse licensed facilities reflecting community expectations, and that this diversity is seen as beneficial for a broad range of entertainment options and is exemplified by the success of similar licensing arrangements in other locations (such as Maniax Newcastle); and
 - c) the Review Application supports the responsible development of the liquor and licensed hospitality industries, allowing the Premises to expand its offerings and enhance the patron experience without compromising safety or responsible alcohol consumption practices.
111. The Commission acknowledges the value in promoting a diverse range of licensed facilities, including unique venues like an axe-throwing establishment. The presence of distinctive recreational spaces contributes to the cultural and social fabric of the community, offering varied experiences to the public.
112. Nevertheless, while appropriate diversity in licensed venues is encouraged, it must not compromise the objective of harm minimisation, which is the primary object of the LCR Act.
113. The Commission accepts that alcohol currently plays an ancillary role in the overall patron experience and that the existing controls and RSA practices at the Premises have proven effective in managing risks for non-participants in axe throwing. However, the Commission considers that permitting alcohol consumption before and during an activity like axe throwing significantly alters the level of risk and exacerbates the inherent risks of harm.
114. In the Commission's view, that risk is not sufficiently minimised by the proposed environmental, physical, and administrative mitigations.

Proposed variation of conditions to change the word ‘affected’ to ‘impaired’

115. The Commission has in addition separately considered the request to change the wording of the term ‘affected’ to ‘impaired’ in the existing Special Conditions of the Licence.
116. Regarding this request to change the language of the Licence to say ‘impaired’ instead of ‘affected’, Mr Robinson submitted that the intent was to achieve consistency with internal documentation of the Premises and provide clarity to staff. He argued that ‘affected’ could be vague and open to interpretation, suggesting that ‘noticeably affected’ as another alternative, aligning more closely with the language in section 3AB of the LCR Act.
117. The Commission considers that the word ‘affected’ is consistent with the legislation and also consistent with Maniax Group’s other licence in Victoria (at Maniax Abbotsford) and is therefore appropriate in the circumstances.
118. The Commission considers that the Applicant is required to meet the licence conditions as presently worded. On that basis and having regard to all the matters set out above, the Commission has determined to refuse the Applicant’s request to amend the term ‘affected’ in the conditions of the Licence.

Decision on review

119. Having regard to all the matters set out above, the Commission has determined to affirm the decision of the Delegate and refuse the application for variation of the Licence.

The preceding 119 paragraphs are a true copy of the Reasons for Decision of Ms Danielle Huntersmith (Chair), Mr James O’Halloran (Deputy Chair), Mr Steven Brnovic (Commissioner), and Ms Thu-Trang Tran (Commissioner).