

Decision and reasons for decision

In the matter of an application under section 153 of the *Liquor Control Reform Act 1998* by Archie Brothers Australia Pty Ltd for an internal review of a decision by a delegate to:

- 1) refuse an application for variation of an on-premises licence; and
- 2) refuse to grant an application for a permanent underage approval

for the premises trading as Holey Moley/Hijinx Hotel, located at Shop 2-007, Chadstone Shopping Centre, 1341 Dandenong Road, Malvern East.

Commission:	Mr John Larkins, Acting Chair Mr James O'Halloran, Deputy Chair Mr Steven Brnovic, Commissioner Ms Sue Timbs, Commissioner
Appearances:	Mr Daniel Robinson, Counsel for Archie Brothers Australia Pty Ltd Mr Michael Majewski, Counsel Assisting the Commission
Dates of Hearing:	1 – 2 May 2024
Date of Decision:	9 December 2024
Date of Reasons:	9 December 2024
Decision:	The Commission has determined to set aside the decision of the delegate and, in substitution, grant: <ol style="list-style-type: none">1) the variation of an on-premises licence; and2) the application for a permanent underage approval subject to the conditions set out in Appendix A.
Signed:	



John Larkins
Acting Chair

Introduction

1. Alcohol consumption harms minors. Victorian law prohibits licensees from supplying liquor to minors, limits minors' exposure to liquor and limits the circumstances on which unaccompanied minors should be on licensed premises, for that reason.
2. The Applicant operates premises in a busy shopping centre, which includes novel, immersive attractions and games with varying degrees of appeal to minors.
3. These internal review applications are one of two separate internal reviews sought by this applicant, which were heard and determined together. The issue in both cases was whether unaccompanied minors should be permitted on those premises, to play games alongside adults, where alcohol is consumed during those games. The Commission decided to grant the first application with respect to the venues of Archie Brothers Cirque Electric and Strike Bowling, which are co-located on the same premises at Chadstone Shopping Centre. Much like the first application, this application also involves two venues co-located on the same premises: Holey Moley and Hijinx Hotel. While the nature of the venues on the premises the subject of this application are different, ultimately, the Victorian Liquor Commission (**the Commission**) has also decided to grant the applications with respect to the Holey Moley/Hijinx Hotel premises for similar reasons. These reasons for decision should therefore be read together with the Commission's reasons in *Archie Brothers Pty Ltd for the premises trading as Archie Brothers Cirque Electric/Strike Bowling*.

The Premises

4. Archie Brothers Australia Pty Ltd (**the Applicant**) is the holder of the on-premises licence (Licence No. 32371083) (**the Licence**) for the premises located at Shop 2-007, Chadstone Shopping Centre, 1341 Dandenong Road, Malvern East, trading as Holey Moley/Hijinx Hotel (**the Premises**).
5. The Applicant is part of the Funlab Group (**Funlab**), a leisure and entertainment company managing multiple venues offering activities such as arcade games, bowling, mini-golf, and escape rooms. These venues feature bar environments and tavern-style dining.
6. One section at the Premises is Holey Moley: a compact 18-hole miniature golf venue with each hole themed. Holey Moley includes a licensed premises area, which is the main bar area. This area includes seating and is supported by the provision of food and drink. According to evidence of Niall O'Doherty, Chief Operating Officer of Funlab Group:

Holey Moley is a nostalgic, fun and interactive mini-golf experience where the focus isn't necessarily about who gets the best score but more about how much fun everyone has getting

through the course and what memories they take with them. The courses are designed with all ages and skill levels in mind and getting an ‘instagrammable’ picture is more important than a hole in one.¹

7. The other section at the Premises is Hijinx Hotel: a restaurant/bar with a series of interactive challenge rooms where guests engage in timed games. Like Holey Moley, Hijinx Hotel includes a licensed premises area, which is the main bar area that has seating and is supported by the provision of food and drink. In his witness statement, Mr O’Doherty describes the section as follows:

Hijinx Hotel resembles a combination of games and challenges where patrons enjoy scoring points on the leaderboard. It comprises of 5 random challenge rooms upon arrival, providing an element of surprise and mystery which entices patrons. It is interactive and provides elements of time pressure as each challenge room has a time limit for the objective to be reached. This makes Hijinx Hotel unique as it resembles a hotel, but is solely for games and not for accommodation.²

8. While Holey Moley and Hijinx Hotel are part of the same Premises, they are split into two adjacent venues. The entrances to each of the sections sit on opposite ends of the Premises, and there is a licensed seating area surrounding each entrance, as per the following images:



Figure 1: Entry to Hijinx Hotel



Figure 2: Entry to Holey Moley

¹ Witness Statement of Niall O’Doherty, dated 24 April 2024, at [16].

² Ibid at [18].



Figures 3 and 4: Examples of interior of Holey Moley



Figure 5: Example of interior of Hijinx Hotel

9. Within the Premises, the venues are split by a wall separating each of the licensed premises areas (i.e., the main bar areas), with the Holey Moley venue at the south end of the Premises, and the Hijinx Hotel venue at the north end.

The Licence

10. The Licence authorises the Premises to supply liquor for consumption on the licensed premises within defined trading hours:
- Monday to Sunday – between 11am and 1am the following morning.
 - Good Friday and ANZAC Day – between 12 noon and 1am the following morning.

11. The Licence is endorsed with an authorisation for the Applicant to supply liquor within the unlicensed areas of the Premises, subject to delineation and signage requirements in accordance with section 9(1)(b) of the *Liquor Control Reform Act 1998 (the LCR Act)*.³
12. The red line plan of the Premises (**the Red Line Plan**) illustrates the location of the licensed premises areas in each section. These are designated as 'L.P.' in the below Figure 6:

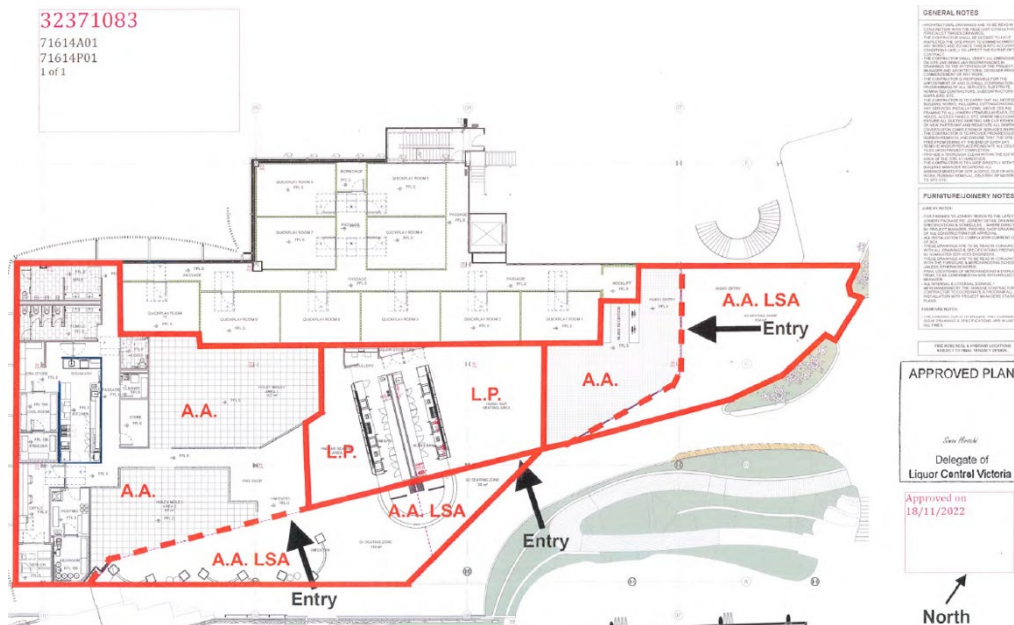


Figure 6: Red Line Plan of the Premises

13. Alcohol can also be supplied within the unlicensed areas of the Premises, known as 'authorised areas'. The authorised areas are designated on the Red Line Plan as 'A.A.'. The licensed seating areas are also authorised areas and they are designated on the Red Line Plan as 'A.A. LSA'.
14. However, this is only in circumstances when the authorised areas are 'switched on', i.e.:
 - a) the authorised areas are clearly delineated with barriers or similar physical devices; and
 - b) signage must be prominently displayed at each entrance, stating that no person under the age of 18 is allowed within the authorised areas unless accompanied by a parent or legal guardian.
15. In effect, switching on the authorised areas permits the Applicant to supply liquor for consumption in all areas of the Premises (except for the challenge rooms at Hijinx Hotel, which sit outside of the red-lined sections), so long as there are no unaccompanied minors. For convenience, these conditions were referred to throughout the hearing as the 'Strike Conditions', and are so referred to here.

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

16. Funlab operates a number of other licensed premises in Victoria which also have the Strike Conditions.⁴
17. The Applicant's current practice of turning on the authorised areas on the Premises is similar across its two sections:
- At Holey Moley, the authorised areas are switched on at all times, and alcohol supply and consumption can occur across the whole venue, including the licensed seating areas. By keeping the authorised areas switched on, the Applicant in effect excludes unaccompanied minors at all times.
 - At Hijinx Hotel, the authorised areas are switched on at all times, and alcohol supply and consumption can occur across all of the authorised areas and licensed seating areas of the venue. Like with Holey Moley, by keeping the authorised areas switched on, the Applicant excludes unaccompanied minors from the venue at all times. No supply of liquor is allowed in the challenge rooms as they sit outside of the red-lined parts of the Premises.
18. From 8pm onwards, all minors (whether accompanied or not) are required to leave the Premises, and all authorised areas as delineated on the Red Line Plan.
19. The Applicant must also comply with Responsible Service of Alcohol (**RSA**) requirements, including that it ensures that any person who sells, offers for sale or serves liquor on the licensed premises has completed responsible service of alcohol programs.⁵

The Original Applications

20. On 13 December 2022, the Applicant, represented by BSP Lawyers (**BSP**), lodged two applications with the Commission. In summary, these applications (**the Original Applications**) consist of the following:
- an uncontested application for a variation of conditions on the Licence under section 29(2)(c) (**the Licence Variation**); and
 - an uncontested application for a permanent underage approval under section 120(2)(e) until 8pm (**the Permanent Underage Approval**).
21. The Applicant also proposed a condition on the Licence that the Permanent Underage Approval only applies when the licensees or a related entity within Funlab holds the Licence.

⁴ The following premises also have the Strike Conditions: Archie Brothers Morris Moor (on-premises licence no. 32373768); Strike/Archie Bros/Holey Moley, Point Cook (on-premises licence no. 32283078); Strike Bayside (late night (on-premises) licence no. 32276673); Strike CCW (on-premises licence no. 32293502); Strike City (late night (on-premises) licence no. 32271623); Strike Eastland (on-premises licence no. 32354934); Strike Highpoint (on-premises licence no. 32327848); Strike Melbourne Central (late night (on-premises) licence no. 32280339).

⁵ LCR Act, sections 108AA, 108AB, 108AC, 108AD.

22. The Original Applications are interdependent, and cover two different sections on the Premises (i.e., Holey Moley and Hijinx Hotel). They are interdependent in that what is sought, which is the substitution of the current Strike Conditions with an approval under section 120(2)(e).
23. The rationale behind the Original Applications is (in summary):
- a) The Applicant aims to provide a consistent experience for guests across different venues both within Victoria and nationally. Currently, Victoria is the only jurisdiction where the Strike Conditions apply in a number of Funlab premises, creating inconsistencies in customer experiences across different locations.
 - b) A consistency in experience would improve how requirements regarding minors are conveyed to staff across all venues. Funlab would achieve consistent procedures and staff training by allowing the same rules to apply across its brands.
 - c) The Applicant wants to prevent customer disappointment and refunds due to misunderstandings regarding restrictions on unaccompanied minors, noting that customers expect uniform access across similar entertainment precincts.
 - d) The Applicant wants its staff to focus more on liquor licensing compliance measures that directly reduce harm, such as preventing secondary supply of alcohol to minors and ensuring responsible alcohol service. This, the Applicant argues, is more effective than having staff focus on managing physical aspects of the Strike Conditions, such as signage and demarcation. By emphasising staff interaction, supported by RSA training, the Applicant believes that staff can better monitor and manage the consumption of liquor while enhancing the overall customer experience.⁶
24. In its submissions on behalf of the Applicant, BSP stated that the expected outcomes of the grant of the Original Applications were that “the proposal would allow unaccompanied minors to enjoy the activities and gaming components of the Premises, as well as the non-alcoholic food and beverage offerings.”⁷ Essentially, the arrangement would facilitate the supply, handling, and consumption of alcohol by adults while they are actively engaging in or near the same activities as unaccompanied minors. For example, a group of friends may include a mixture of teenagers and adults who visit the Premises together to enjoy mini-golf or challenge rooms, and the adults in the group could responsibly purchase and consume alcohol during their visit. The intention is to create an inclusive experience where both unaccompanied minors and adults can participate in shared social activities.

⁶ See above n 1, at [20].

⁷ Annexure to variation application, dated 8 December 2022.

25. In support of the Original Applications, BSP provided the Commission with a copy of the Venue Management Plan (**VMP**). Relevantly, the VMP included specific provisions for monitoring minors on the Premises:
- a) The Premises allows unaccompanied minors to attend the Premises until no later than 8pm on any given day. After this time, unaccompanied minors are prohibited from being on the Premises.
 - b) All staff are under strict instructions to ensure that liquor is not sold or supplied to persons under the age of 18 years. This includes preventing secondary supply, where an adult might provide alcohol to a minor. To enforce this, any person suspected of being under 18 will be required to present appropriate identification confirming they are of legal drinking age. Acceptable forms of identification are strictly those approved under the LCR Act, and foreign passports are the only acceptable form of international ID.
26. While the Applicant chooses to keep authorised areas switched on at all times, and so does not allow unaccompanied minors on the Premises at any time, the Commission understands that the above VMP provisions are intended to apply in the circumstances that the Applicant is granted a permanent underage approval.
27. BSP submitted that the Applicant is an experienced operator of licensed premises, with its director managing several other Funlab venues. It also submitted that a number of these venues have operated with a permanent underage approval without any infringements or non-compliance incidents over four years, demonstrating their capability to manage such conditions.
28. Pursuant to section 33, copies of the Original Applications were served on the Chief Commissioner of Police and on the Stonnington Council. Neither objected to the Original Applications.
29. On 14 February 2023, BSP provided supplementary submissions on behalf of the Applicant in support of the Original Applications (in summary):
- a) BSP emphasised that section 120(1) allows minors on licensed premises under certain conditions, and the broad powers granted to the Commission suggest that Parliament anticipated additional circumstances for the grant of permanent underage approvals.
 - b) The Premises is located in a family-friendly area within Chadstone Shopping Centre (**Chadstone SC**), where unaccompanied minors are expected to visit.
 - c) The social profile of Chadstone SC's patrons does not indicate economic disadvantage or vulnerability to alcohol abuse, and there is no notable issue of underage drinking or secondary supply in the area.

- d) As part of Funlab, the Applicant has considerable experience managing premises with permanent underage approvals at other locations, including Crown Casino, Frankston Shopping Centre and Docklands. This demonstrates that the Applicant had proposed effective harm minimisation strategies in its management plan.
- e) The permanent underage approval sought is not a blanket authority but limited to 8pm, reflecting the venue's youth-friendly focus during the day, with liquor being an ancillary component. This reduces the risk of secondary supply.

Original Decision

30. On 6 September 2023, a delegate of the Commission refused the Original Applications pursuant to subsection 44(2)(b)(ii)⁸ (**Original Decision**). In summary, the delegate was not satisfied that granting the Original Applications would be in line with the objects of the LCR Act, in particular the objects of harm minimisation and the responsible development of the liquor industry.⁹

Applications for Internal Review

31. On 18 September 2023, the Applicant applied to the Commission for review of the Original Decision (**Review Applications**).
32. Between 1 and 2 May 2024, the Commission held a public hearing of the Review Applications (**the Hearing**). Mr David Robinson of Counsel appeared for the Applicant, and the following witnesses gave evidence for the Applicant:
- a) Niall O'Doherty, Chief Operating Officer of Funlab;
 - b) Natasha Ciconte, Operations Manager of the Premises;
 - c) Mitchell Bierman, Venue Manager of the Premises;
 - d) Tony Zalewski, Director of General Public Safety; and
 - e) Laura Thomas, Director of Urbis.

Legislation and the Commission's task

The Commission's internal review power

33. 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 Applications were made pursuant to section 153.

⁸ Section 44(2) states that: The Commission may refuse to grant an uncontested application on any of the following grounds — [...] (b) in any case - [...] (ii) that the granting of the application would be conducive to or encourage harm.

⁹ See section 4(1).

34. Pursuant to section 157(1), the specific task for the Commission with respect to the Review Applications is to make a fresh decision that either affirms or varies the reviewable decision, or sets it aside and substitutes it for another decision considered appropriate.¹⁰ In effect, in this case, the Commission may either grant the Original Applications and if so, whether to do so subject to conditions,¹¹ or refuse to grant them.¹²

Determination of an uncontested application

35. Under the LCR Act, an application for variation of an on-premises licence may be contested or uncontested. The Original Applications were uncontested.

36. Where an application is an uncontested application, section 44(1) requires the Commission to grant or refuse to grant such an application at any time after the expiry of the applicable period for making an objection. Section 44(2) empowers the Commission to refuse to grant the Review Applications on various grounds, including that granting of the application would be conducive to or encourage harm.¹³

37. 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.

38. 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.

The objects of the LCR Act

39. 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

¹⁰ Section 157(2) to (5) further prescribe the manner in which the Commission is to undertake internal reviews.

¹¹ Sections 44, 49 and 157.

¹² Sections 44 and 157.

¹³ Section 44(2)(b)(ii).

(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.

40. 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.¹⁴

41. 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.*

42. 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.

Other sections of the LCR Act relevant to this matter

Section 9 Authorised Premises

43. Pursuant to section 9(1)(b), the Commission may approve an on-premises licensee to supply liquor on any other premises authorised by the Commission and specified in the licence for consumption on those premises.

Section 120 Permanent underage approval

44. Section 120(1) provides that a licensee is guilty of an offence if a person under the age of 18 years is on a licensed premises or any authorised premises and is not in the company of a responsible adult.

45. Section 120(2)(e) provides an exception to the offence, providing that it does not apply to the presence on licensed premises or authorised premises of a person under the age of 18 years in

¹⁴ See further *Kordister Pty Ltd v Director of Liquor Licensing* (2012) 39 VR 92; [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).

accordance with the approval of the Commission and any conditions to which that approval is subject.

46. Section 120(3) provides that, if the Commission grants or revokes an approval for the purposes of subsection (2)(e), the Commission must cause the licence or permit to be endorsed accordingly.

47. The Commission's reasons in *Archie Brothers Pty Ltd for the premises trading as Archie Brothers Cirque Electric/Strike Bowling* set out the Commission's approach to the exercise of discretion under section 120(2)(e), having regard to the statutory context, history of the provision and previous decisions insofar as they may be relevant to what the Commission had observed to be a growth of new, immersive-type entertainment offerings.¹⁵ It is unnecessary to duplicate that approach here, save to say that the Commission adopts the same approach in determining these applications.

Reasons for decision on review

Issues for determination on review

48. The main issues for the Commission in this review are whether varying the Licence would be conducive to or encourage harm or otherwise contrary to the objects of the LCR Act, and whether the grant of the Permanent Underage Approval would be consistent with the objects of the LCR Act; particularly, minimising harm to minors.

49. Specifically, the question is whether allowing the Applicant to supply liquor for consumption across the whole Premises when minors are unaccompanied by a parent or legal guardian would increase the risk of harm to minors.

50. For the reasons that follow, the answer to that question is a qualified 'no'.

Whether granting the Review Applications would be conducive to or encourage harm, or be contrary to the objects of the LCR Act

The Commission is concerned to minimise harm to minors

51. The Commission has a specific and serious focus on giving effect to the statutory objective of minimising the risk of alcohol-related harm to minors. That is because of the nature of the harms/understanding of impact on liquor on minors. The concept of harm minimisation is anticipatory and there may be cases in which a conservative approach should be adopted.¹⁶ When it comes to harm to minors, the Commission adopts a conservative approach.

¹⁵ See further *Archie Brothers Pty Ltd for the premises trading as Archie Brothers Cirque Electric/Strike Bowling* [2024] VLC at [53]-[72].

¹⁶ See further *Kordister* [34], citing *Nardi v Director of Liquor Licensing* [2005] VCAT 323 [51].

52. Underage drinking poses unique risks, particularly due to its impact on the developing adolescent brain. Alcohol consumption during this critical growth period can interfere with brain functions related to memory, language, attention, and executive functioning, leading to cognitive impairments that may persist into adulthood. These effects can diminish an individual's ability to succeed in school, work, and daily life, highlighting the importance of minimising young people's exposure to alcohol. In addition, academic research indicates that peer influence plays a significant role in adolescent alcohol use, with both direct interactions and sustained exposure to peers impacting drinking behaviours.¹⁷
53. In the context of the Review Applications, the Commission acknowledges that the Premises features distinct sections, each providing a unique combination of entertainment options that may appeal to minors. This configuration necessitates a careful consideration of the potential risks posed by allowing unaccompanied minors in an environment where alcohol is served.

The Premises is in the Social Quarter, at Chadstone SC

54. The Premises is situated within The Social Quarter, a mezzanine dining area at Chadstone SC. In its submissions on behalf of the Applicant, BSP describes Chadstone SC as being 'undeniably a family-friendly area', where 'the patron demographic and social profile' is 'not questionable or problematic', and 'there is no profile of economic disadvantage or vulnerability to alcohol abuse'.¹⁸
55. While it may be true that Chadstone SC is generally perceived as a family-friendly, low-risk location with a positive social profile, it is important to acknowledge that, as a large public shopping centre, it is not immune to the risk of antisocial behaviours, including incidents of violence and youth-related disturbances. The presence of multiple licensed venues increases the risk of alcohol-related harm, particularly during peak trading times and events that draw large crowds. Past incidents involving unruly behaviour, both alcohol-fuelled and otherwise, demonstrate that even locations typically regarded as safe and well-managed can experience periods of heightened risk.
56. Indeed, even the Applicant acknowledges this risk within its VMP¹⁹, where it states that '[s]taff and management are to be mindful of other licensed premises in the area when assessing patrons for intoxication, anti-social conduct, or any indication of use of illicit substances'.²⁰

¹⁷ Leung, R. K., Toumbourou, J. W., & Hemphill, S. A. (2014). The effect of peer influence and selection processes on adolescent alcohol use: A systematic review of longitudinal studies. *Health Psychology Review*, 8(4), 426–457. See also Henneberger, A. K., Mushonga, D. R., & Preston, A. M. (2021). Peer Influence and Adolescent Substance Use: A Systematic Review of Dynamic Social Network Research. *Adolescent Research Review*, 6(1), 57–73.

¹⁸ Addendum submissions in support of variation application, dated 9 February 2023.

¹⁹ Plan of Management – Holey Moley/Hijinx Hotel, Shop 2-007, The Social Quarter, 1341 Dandenong Road, Malvern East, VIC, 3148, dated December 2022.

²⁰ *Ibid*, [71].

57. The Social Quarter at Chadstone SC comprises several licensed premises that collectively form a centralised dining and entertainment area within the centre. Besides the Premises, these licensed venues include Cityfields, an all-day eatery and bar,²¹ and Cinque Terre, an Italian restaurant.²²

58. In her report dated 24 April 2024, Ms Thomas describes The Social Quarter as a “precinct [that] was opened in 2023 with a focus on entertainment and dining”. According to Ms Thomas,

“[T]he aim of the Social Quarter is to expand the offering at the centre beyond shopping alone and to bolster the range of experiences available into the evening hours. The Social Quarter has been developed adjacent to the existing entertainment focus (Hoyts, Legoland, existing restaurants).

All of the restaurants in the Social Quarter and the adjoining Dining Terrace are licensed, as is the Hoyts Cinema”²³

59. In its submissions on behalf of the Applicant, BSP describes The Social Quarter as ‘a high-quality offering which will attract many young and adult patrons – and it is not a location with an association of high-risk behaviour when it relates to alcohol’.

60. Chadstone SC is particularly accessible to minors. The centre is well serviced by public transport, with several bus routes stopping directly at the shopping complex, including at the dedicated bus interchange. The Social Quarter is conveniently situated within walking distance from this interchange, making it easily reachable for young people using public transport. Additionally, the close proximity to Oakleigh Station, only a five-minute bus ride away, further enhances accessibility for minors traveling from other parts of the city.

61. This ease of access makes the Premises inherently attractive to younger individuals, who may frequent the shopping centre not only for retail or social purposes but also for recreation – potentially at a licensed venue. This level of accessibility, paired with the presence of multiple attractions at Chadstone SC that are targeted at youth, may increase the potential risk of underage individuals attempting to access or loiter near a licensed premises.

62. According to evidence of Dr Zalewski at the Hearing, the Premises within The Social Quarter is favourable because it is somewhat out of the way and not in high-traffic areas or thoroughfares. This reduces the likelihood of people merely passing by, as patrons have to physically go to the entertainment areas. He also noted that the Premises is not located adjacent to the food court, which often attracts loitering in shopping centres.²⁴

²¹ General licence no. 31962328.

²² Restaurant and café licence no. 32370312.

²³ Report of Laura Thomas, dated 24 April 2024, [8]-[9].

²⁴ Transcript of 1 May 2024, p13.

63. In addition, the witnesses for the Applicant described the physical layout of The Social Quarter as a "horseshoe-shaped precinct" that is relatively contained, with limited access points and minimal through-traffic.²⁵ Witnesses stated that Chadstone SC provides "central security" which the Premises can rely on for support in patron management.²⁶

64. The Commission accepts that, on balance, the risk profile of The Social Quarter appears to be low. The contained layout, low through-traffic, physical separation from high-traffic areas, and centralised security contribute positively to managing these risks. Nonetheless, vigilance must be maintained due to the shopping centre setting, which brings its own set of challenges in ensuring public safety and the responsible service of alcohol at licensed premises located therein.

The Premises has a broad age appeal

65. The Premises is unique as it has two separate offerings, with each being a separate and distinct section that is part of the same licensed premises.

66. On behalf of the Applicant, BSP submitted:

The Premises is not primarily a 'bar', rather it is a family-oriented recreation facility with a multitude of activities and games that are designed to appeal to all ages – including to minors. The application therefore does not establish a precedent, or an image that is contrary to the public interest, of allowing minors into Premises that are primarily designed to operate as 'bars'.²⁷

67. The marketing material for the Holey Moley section depicts it as a diverse entertainment space. Its website describes it as a "multi-sensory labyrinth", offering mini golf with immersive, themed elements. Dynamic imagery conveys a cheerful atmosphere, depicting social interaction and group enjoyment, positioning Holey Moley as a venue for casual gatherings and celebrations. The visuals suggest that the venue targets a broad demographic, including children.²⁸ The marketing material for the Hijinx Hotel section also depicts it as a diverse entertainment space, targeting group activities, including families, students, and adults. Its website describes it as a "quirky New York style hotel".²⁹

²⁵ Transcript of 1 May 2024, p29; Transcript of 2 May 2024, pp30, 51.

²⁶ Transcript of 2 May 2024, p51.

²⁷ See above n 7.

²⁸ For example, see Holey Moley website:

https://www.holeymoley.com.au/?_gl=1*1o2j7bi*_ga*MTE3MDg1MzA2OS4xNzMwNjExNiY2*_ga_KE036Z8JY9*MTczMjlzNTk5Ni41LjEuMTczMjlzNTk5OC4wLjAuMA.

²⁹ For example, see Hijinx Hotel website:

https://www.hijinxhotel.com.au/?_gl=1*1o2l6g*_ga*MTE3MDg1MzA2OS4xNzMwNjExNiY2*_ga_KE036Z8JY9*MTczMjlzNTk5Ni41LjEuMTczMjlzNTk5OC4wLjAuMA.

68. The overall messaging of both sections illustrates the Premises as a destination for group entertainment. The supply of liquor at the Premises is designed to be ancillary to the broader entertainment offering, which focuses primarily on providing recreational and social activities. In his statement, Mr O'Doherty said that:

All Funlab venues are designed to create spaces where people of all ages can come to experience different forms of entertainment as a primary reason to visit, in a surrounding that is conducive to creating connections, fun and memories. Food and beverage offerings are complementary to these entertainment offerings and allow us to cater to the needs and wants of our guests in an inclusive and welcoming environment.

Whilst each concept and each venue has unique qualities, many of our venues are designed to cater for all groups with a focus on families and safe spaces during the day before catering for a more adult-centred demographic at night.³⁰

69. The layout of the Holey Moley section appears to be designed to create an immersive and engaging environment. It offers two distinct nine-hole mini-golf courses, each featuring uniquely themed holes that blend creativity with interactive elements. The design incorporates vibrant colours and dynamic lighting that appeals to a broad demographic.

70. At the Hijinx Hotel section, guests are greeted by a faux lobby adorned with vibrant shapes colours and surrealist elements, implying a whimsical tone to a traditional hotel setting. The authorised areas on the venue have extensive seating with high bar stools around small round tables, some booths with bookshelves, and more spacious padded chairs. Combined with the adjoining challenge rooms which offer activities (such as throwing a basketball through a hoop, solving word scrambles, or remembering song patterns on a giant piano), the Hijinx Hotel section also has a design that would appeal to a broad demographic.

71. The Commission also gives weight to the fact that Hijinx Hotel's and Holey Moley's entry points are less obviously aimed at attracting minors. Adjacent to Hijinx Hotel is Holey Moley, but Holey Moley is accessible by escalator above ground level. In that sense, Holey Moley is a venue that is separate to Hijinx Hotel, and even more separate and discrete from Strike Bowling and Archie Brothers Cirque Electric and the experiential setting outside their entrances.

72. The Commission does not consider that either section of the Premises is uniquely directed at minors. In addition, the Commission notes that, while both sections do have various fixtures, they are relatively compact, and staff members would have a mostly unobstructed line of sight to observe patron activity and behaviour.

³⁰ See above n 1, at [9]-[10].

73. The Commission recognises that the Premises represents a recent paradigm shift from venues for which permanent underage approvals are typically sought, where minors' presence may be ancillary to some other activity, such as partaking in a meal, or for a sporting occasion. In this case, the Premises allows for patrons at Holey Moley to partake in activities while consuming alcohol, and so while a person may choose to drink alcohol or not, the consumption of alcohol is not necessarily ancillary to the entertainment on offer, but may be part of it, and part of its attraction.
74. The combination of amusement activities and licensed alcohol service at the Premises presents a challenge, as it risks blurring the lines between child-appropriate entertainment and adult-oriented experiences, potentially creating an environment where minors could be unduly influenced by the presence of alcohol and have easier access to it.
75. Evidence before the Commission was that players tend to spend up to two hours at the Premises at a time,³¹ which is a lengthy period for a minor to potentially be in the vicinity of adults consuming alcohol throughout. This extended exposure not only heightens the risk of minors perceiving alcohol as a typical element of social engagement but also increases the possibility of secondary supply.
76. With a permanent underage approval in place, minors at the Premises would be exposed to people other than their parents drinking. In her evidence, Ms Thomas identified that peer influence is a risk factor when it comes to alcohol-related behaviours, as older peers drinking in the presence of minors could influence alcohol behaviours.³² The research reviewed by Ms Thomas highlighted that peer behaviours can play a major role in normalising drinking for young people.³³
77. Ultimately though, given the state of the research that was before the Commission, and the evidence as to supervision and management in place at these particular Premises, this in itself did not give rise to a ground on which these applications could properly be refused.

Licensee mitigation measures

78. The Applicant has made submissions about Funlab's experience in operating multiple licensed premises with similar Holey Moley and Hijinx Hotel activations. In effect, the Applicant is seeking to adopt licence conditions and authorisations similar to those already in operation at a number of other Funlab premises with a permanent underage approval.³⁴ The Commission accepts the strong compliance history of these venues operated by Funlab. This is a significant protective factor against the risk of harm to minors at the Premises: Funlab's compliance history gives the

³¹ Transcript of 2 May 2024, p135.

³² *Ibid*, p112.

³³ *Ibid*, p126.

³⁴ The following premises have a permanent underage approval: Archie Bros Cirque Electric/Strike Bowling (on-premises licence no. 32371106); Archie Brothers Cirque Electric (on-premises licence no. 32347911); Archie Brothers Century City Walk (on-premises licence no. 32379219); Holey Moley Crown (late night (on-premises) licence no. 32351897); B. Lucky and Sons (late night (on-premises) licence no. 32280371); Holey Moley (on-premises licence no. 32276160).

Commission comfort that it will also be able to appropriately mitigate risks of harm to minors arising from their presence on licensed premises; that being so, the Commission has determined to impose the conditions suggested by the Applicant, that the Permanent Underage Approval applies only so long as the Applicant or a related entity within the Funlab Group holds the Licence. It stands to reason that the removal of the Strike Conditions should be granted on the same basis.

79. The Applicant provided information to the Commission about measures currently taken by the Applicant to mitigate the risks of harm at the Premises, including those arising from the misuse and abuse of alcohol at the Premises.
80. According to the existing VMP, the staffing at the Premises generally includes a manager, one staff member, and a technician during weekday trade before 5pm. After 5pm on weekdays, a manager and two staff members are present. On weekends and during school holidays, staffing increases to a manager and three to four staff members based on anticipated patronage. On Friday and Saturday nights after 5pm, the Premises operates with two managers and five to six staff, adjusted according to expected patron numbers.
81. In her evidence at the Hearing, Ms Ciconte provided a comprehensive outline of the training process for all team members, which starts with an induction and continues with sectional training for specific areas, such as floor, bar, and reception duties.³⁵ Ms Ciconte stated that managers receive training on the use of the 'Safety Culture' platform for incident reporting, which is part of their onboarding. According to Ms Ciconte, incidents are recorded on the Safety Culture platform and reviewed regularly. If there are learning opportunities or corrective actions to be implemented, they are communicated back to the management teams.³⁶
82. While Ms Ciconte was unable to provide an example of when an alcohol-related incident arose, including in the context of underage supply, the Commission accepts that the Applicant has successfully operated for a period of two years without any alcohol-related incidents. The Commission further notes that Victoria Police did not raise any concerns with regard to the Original Applications.
83. The Commission accepts that the Applicant has established appropriate controls relating to staff training and incident reporting. The Applicant's proactive approach to minimising risks, including staff training on harm minimisation, regular audits of compliance measures, and dedicated supervisory staff during peak hours, provides the Commission with confidence that the risks of harm to minors on the Premises can be effectively mitigated in part through these measures.

³⁵ Transcript of 2 May 2024, p5.

³⁶ Ibid, pp26-27.

84. Other strategies are proposed. Ms Ciconte described that if the grant was successful, the Applicant would implement a wrist-banding policy. She said:

“Any patron who attends and purchases liquor will be provided with a wrist-band. The purpose of this is to simplify the ability for staff to visually monitor any drinking activities of patrons – as staff would be prompted to approach any patron who appears to have liquor but not a wristband. Patrons would have to provide identification to the satisfaction of staff in accordance with our House Policy.”³⁷

85. In his report, Dr Zalewski stated that, overall, the existing VMP for the Premises “provides a reasonable basis for effective management, compliance and security”. In addition, he stated that he was of the view that the Premises did not “disclose any specific risks that would not be evident in any similar licensed premises where unaccompanied minors are permitted”. However, he did propose several changes to the existing VMP to ensure effective risk mitigation, compliance and improve safety procedures, relevantly including:

- a) attaching Standard Operating Procedures (SOPs) to the existing VMP to provide clear, step-by-step instructions for key operational activities (e.g., how to manage patrons, respond to incidents, intervene on suspect patrons, identify fake IDs, and deal with unaccompanied minors);
- b) providing documented guidance on specific risks, such as images of all approved forms of identification, steps to identify fake IDs, and actions to take if a fake ID is detected;
- c) detailing specific methods for monitoring and managing unaccompanied minors, such as allocating responsible staff to oversee specific areas and taking proactive steps to prevent secondary supply of alcohol to minors.

86. The Commission accepts Dr Zalewski’s evidence in this regard. It is important that the Applicant maintains and complies with a VMP that is appropriate to the risks posed by unaccompanied minors on the Premises, and that it continues to abide by the training and management practices of at least the standard and quality described to the Commission by the Applicant and Dr Zalewski. The Commission will impose conditions on the Licence that the Applicant does so.

87. Given the importance of ensuring proper monitoring of the Premises in reducing the risk of harm to minors, the Commission imposes specific conditions requiring security guards, CCTV and embedding appropriate RSA measures as set out in the VMP.

88. For those reasons, the Commission is not satisfied that it would be conducive to or encourage harm to revoke the Strike Conditions from the Licence and there is no other reason to refuse the application to vary the conditions, subject to a grant of the Permanent Underage Approval.

³⁷ Witness Statement of Natasha Ciconte dated 24 April 2024, at [50].

Should a permanent underage approval be granted?

89. Whether the Permanent Underage Approval ought to be granted requires a consideration of the particular circumstances and risks involved in the grant, having regard to the objectives of the LCR Act, both explicit and inferred.
90. The particular circumstances, site and premises is that it provides a novel entertainment offering in terms of it being an immersive experience which is not of a nature that is typically associated with the consumption of liquor by adults in the presence of minors. It allows for patrons to partake in mini-golf while consuming alcohol, and so while a person may choose to drink or not, a person may drink while playing any of the games on offer.
91. The Commission acknowledges that mini-golf is an activity that has broad appeal. In the Commission's experience, it is a competitive activity that is popular with and played by people of all ages, both minors and adults. It is not uncommon for mini-golf venues in Victoria to offer alcohol as part of the social and recreational offering. In the Commission's view, community expectations are not such as to hold concerns about the association of mini-golf at Holey Moley with the consumption of liquor; accordingly, licensing this premises with an approval under section 120(2)(e) would not be contrary to the objective of facilitating the diversity of licensed premises reflecting community expectations, nor would it amount to an irresponsible development of the liquor, licensed hospitality and live music industries.
92. Based on the design and marketing of the Premises, the Commission does not consider that either Holey Moley or Hijinx Hotel at The Social Quarter are venues that, in the Commission's view, are mainly for minors, or that have a particular appeal to minors. In addition, the game of mini-golf is necessarily limited to however long it takes to play the game. The opportunity for consuming alcohol (and so to engage in risky drinking or secondary supply) is thereby limited by time and activity.
93. The layout of each venue is in and of itself conducive to minimising harm. Areas where alcohol may be consumed at Holey Moley are limited: patrons may gather and remain in small areas at or near mini-golf hole, or at tables in front of the bar area. Each of those areas are confined, easily visible to staff with good opportunity for appropriate supervision to reduce the chance of secondary supply and risky drinking.
94. As for areas where alcohol may be consumed at Hijinx Hotel, these are even more limited as the challenge rooms fall outside of the red-lined section of the Premises. The Commission accepts that what is sought by the Applicant with respect to the Hijinx Hotel venue, is essentially to allow unaccompanied minors to be on licensed premises in areas where food and beverages are served to patrons. In this regard, the Commission notes that the LCR Act already provides an exception to

the offence of a licensee allowing a minor to be on licenced premises, where minors are on the premises for the purposes of partaking of a meal. With that in mind, the Commission does not consider it an irresponsible development in the liquor and licensed hospitality industry to permit unaccompanied minors to be on the non-play areas of the Hijinx Hotel premises for a meal and a non-alcoholic drink (or even a non-alcoholic drink with snacks or alone), given the location, nature and circumstances of this premises and the risk mitigations to be applied by the Applicant.

95. In addition, the Applicant is an experienced operator who has operated similar venues without incident. The absence of evidence of harm from those venues is a matter of considerable weight. The Commission accepts the Applicant is well-aware of its obligations to minimise harm to minors and has implemented (and will implement) a number of appropriate strategies to do so (as described above). The Commission gives further weight to the Applicant's commendable history as a significant protective factor in terms of minimising the risk of harm to minors.

96. Given these factors, and compliance with conditions imposed on the Licence, the Commission considers that the risk of harm to unaccompanied minors, is low. To further reduce this risk, the Applicant has indicated it would limit the approval to 8pm on any day and also require any person who purchases alcohol to wear wrist-bands.

97. The Commission considers these measures would reduce the risk of harm to minors to an acceptably low level. They are appropriate additional layers of protection against harm, and so the Commission will impose these as conditions on the grant of the Permanent Underage Approval.

Decision on review

98. Having regard to all the matters set out above, the Commission has determined to grant the Review Applications.

The preceding 98 paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Acting Chair), Mr James O'Halloran (Deputy Chair), Mr Steven Brnovic (Commissioner), and Ms Sue Timbs (Commissioner).

Appendix A

Type of licence

This licence is an on-premises licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours specified below.

Amenity

The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

No unaccompanied minors may be present on the licensed premises after 8pm on any day.

Venue Management Plan

To the extent that a matter is not already dealt with on this licence, the licensee must maintain and comply with a Venue Management Plan (however described), that:

- (a) contains, at minimum, the matters included in the Plans of Management dated December 2022 as provided by the licensee with respect to responsible service of alcohol, prevention of sale and supply of liquor to minors and supervision of the licensed premises;
- (b) requires persons over the age of 18 years to wear and display wristbands as a condition of entry; and
- (c) implements the recommendations of Dr Tony Zalewski at page 20 of his report dated 25 April 2024.

The licensee must ensure that the Venue Management Plan is retained on the licensed premises at all times for inspection by an authorised member of Victoria Police or Liquor Inspector.

CCTV

The licensee shall install and maintain a surveillance recording system able to clearly identify individuals, which shows time and date and provides continuous images of all entrances and exits, bars and entertainment areas.

The surveillance recording system must operate from 30 minutes before the start of the entertainment until 30 minutes after closure.

A copy of the recorded images must be available upon request for immediate viewing or removal by the Victoria Police, or a person authorised in writing by the Victorian Liquor Commission or its successors, or otherwise retained for at least 1 month.

The positioning of the cameras is to be to the satisfaction of the Licensing Inspector.

Signs 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".

Security

Crowd controllers, licensed under the Private Security Act 2004, are to be employed at a ratio of 2 crowd controllers for the first 100 patrons and 1 crowd controller for each additional 100 patrons or

part thereof. One crowd controller is to be present outside the premises to monitor patrons arriving and departing the premises. Crowd controllers are to be present from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure.

Maximum Capacities

400 patrons

Trading Hours

Monday to Sunday

Between 11am and 1am the following morning.

Good Friday & ANZAC Day

Between 12 noon and 1am the following morning.

Approvals/Consents

Section 9(1)(b) - The areas endorsed as licensed seating area (L.S.A) on the approved plan may operate as authorised premises when the following conditions are satisfied:

- (a) the area or areas are delineated by barriers, rope and post devices, planter boxes or similar demarcation devices; and
- (b) at the entrance to each authorised area a notice of no less than A4 size is displayed which states: "No person under the age of 18 years is permitted within this area unless in the company of a parent or legal guardian" in letters no less than 10mm in height followed by the words: "This area is an authorised area permitting the supply and consumption of liquor pursuant to an on-premises licence under the Liquor Control Reform Act 1998" in letters no less than 5mm in height.

Liquor can be supplied either within the licensed premises or within the authorised premises.

Liquor supplied under this licence may only be consumed within the licensed premises or the authorised premises.

Raves, dance parties or equivalent events are not to be conducted on these premises.

This authorisation operates only when the licensee, or a related body corporate or associated entity (within the meaning of the Corporations Act 2001 (Cth)) of Funlab Pty Ltd holds the licence or is otherwise sub-let or assigned the permissions under the licence;

Section 120(2)(e) - Persons under the age of 18 years are permitted on the licensed premises other than in the company of a responsible adult subject to the following conditions:

- (a) Persons under the age of 18 years are not permitted on the licensed premises later than 8pm on any day;
- (b) The approval operates only when the licensee, or a related body corporate or associated entity (within the meaning of the Corporations Act 2001 (Cth)) of Funlab Pty Ltd holds the licence or is otherwise sub-let or assigned the permissions under the licence;
- (c) The approval operates only so long as the conditions of the licence are otherwise complied with.

End of conditions