The Palace Gallery Pty Ltd t/as The Palace / Level Up v The Commissioner of Police for the State of South Australia **[2025] SALC 70**

LICENSING COURT OF SOUTH AUSTRALIA

THE PALACE GALLERY PTY LTD T/AS THE PALACE / LEVEL UP

v

THE COMMISSIONER OF POLICE FOR THE STATE OF SOUTH AUSTRALIA

JURISDICTION:	Application for Review of a decision of the Commissioner
CASE NO/S:	LC-24-00168
HEARING DATE:	30 April 2025
JUDGMENT OF:	His Honour Judge BP Gilchrist
DELIVERED ON:	19 August 2025

CATCHWORDS:

Application for review – The applicant trades under a general and hotel licence in Hindley Street, Adelaide – It has changed part of its licensed premises to create a venue that provides patrons with the opportunity to play a range of competitive games, from shuffleboard, to darts, air hockey and pool – In addition to these, it wishes to conduct axe throwing – The Liquor Commissioner through a delegate exercised the powers conferred by s 42(2)(g) of the Act to effectively ban axe throwing at the premises on the ground that the imposition of the condition was necessary in the public interest – The delegate took into account the fact that the applicant's premises are within a well-known nightlife area that is considered by police to present a relatively higher risk to public safety, with public order offences, stabbings, assaults and the like, occurring on a relatively regular basis – The delegate decided the application on the understanding that the entry to the area within which axe throwing was to occur was only partitioned off by a rope whereas at the hearing before the delegate it was proposed that the point of entry be more secure – On review the applicant tendered evidence that axe throwing is permitted at a licensed facility in Victor Harbor and at other licensed facilities across Australia and that axe throwing within licensed premises conforms with a global trend of combining social interactive entertainment with licensed premises – Whether a condition to

effectively ban axe throwing at licensed premises was within the power of the delegate to impose – Whether the delegate was right to take into account that Hindley Street has relatively higher risk to public safety given the applicant's good trading record, the fact that axe throwing would cease at 11.00 pm and that most public order issues within Hindley Street occur in the early hours of the morning – Whether the delegate's approach was too cautious having regard to the fact that axe throwing is permitted in other licensed premises in Victor Harbor and elsewhere in Australia – ***Held*** *that the relevant public interest is not limited to matters pertaining to the sale and supply of liquor, the live music industry, tourism and the hospitality industry and that it extends to matters of safety and preventing and detecting unlawful activities and offensive or disorderly conduct within licensed premises, irrespective of whether it involves persons affected by alcohol or whether it relates to the sale and supply of alcohol –* ***Held*** *that the delegate and this Court are permitted to know that the Hindley Street entertainment precinct is a well-known party precinct where people gather to consume alcohol, and that some also consume illicit drugs and that from time to time it is a place where there are issues with breaches of public order, assaults and sadly, occasionally, serious injury and death –* ***Held*** *that the licensing authorities are entitled to assume that even within the trading hours of 11.00 pm, there is a reasonable possibility that there will be persons within the applicant's premises, who will be under the influence of alcohol or illicit drugs, who may behave badly or unpredictably and that in the circumstances, the mere possibility of increased risk is a relevant consideration –* ***Held*** *that without evidence from a suitably qualified expert who has conducted a proper risk appraisal, the Court is not able to know whether the current proposal reflects the implementation of all reasonably practicable measures to ameliorate any potential harm that the introduction of axe throwing at the applicant's premises might cause to patrons and staff –* ***Held*** *that whilst the delegate based her decision on an incorrect factual basis, she came to the right conclusion and the application for review is therefore dismissed – Liquor Licensing Act 1997, Subordinate Legislation Act 1978.*

Kruger v The Commonwealth [1997] HCA 27; (1997) 190 CLR 1
Hogan v Hinch [2011] HCA 4; (2011) 243 CLR 506
Woolworths Ltd v Director of Liquor Licensing [2012] WASC 384
Wigmans v AMP Ltd [2021] HCA 7; (2021) 270 CLR 623
Project Blue Sky Inc v Australian Broadcasting Authority [1998] HCA 28 (1998) 194 CLR 355
Executive Director of Health v Lily Creek International Pty Ltd & Ors [2000] WASCA 258; (2000) 22 WAR 510
Liquorland (Australia) Pty Ltd v Executive Director of Public Health [2013] WASC 51
Liquorland McLaren Vale (No. 2) [2022] SALC 53
Executive Director of Public Health v Lily Creek International Pty Ltd [2001] WASCA 410

REPRESENTATION:

Counsel:
Applicant: Mr B Lodge
Respondent: Brevet Sergeant M Osterstock

Solicitors:
Applicant: Fletcher Lawson Lawyers
Respondent:

1 This is an application seeking a review of a decision by a delegate of the Liquor and Gambling Commissioner (the Liquor Commissioner) to impose a condition on a licence to effectively prohibit the applicant, Palace Gallery Pty Ltd, from conducting axe throwing at its licenced premises in Hindley Street, Adelaide.

2 Palace Gallery trades under a general and hotel licence. It comprises of an upstairs area that offers adult entertainment. It also comprises of a downstairs area that previously traded as a nightclub, known as Red Square. It now goes by the name Level Up, and it is intended to attract a diverse demographic interested in an entertainment experience that is different to a more conventional night club. The revised focus of the venue is to provide patrons with the opportunity to play a range of competitive games, from shuffleboard, to darts, air hockey and pool. Importantly, in the context of this application, it is the applicant's wish that this range of games include axe throwing.

3 On or about 30 October 2024, police became aware that the applicant intended to conduct axe throwing at the premises from 1 November 2024. Police immediately had concerns about the safety of this activity and as a result, pursuant to s 43 of the *Liquor Licensing Act 1997* (the Act), the Commissioner of Police (the Police Commissioner) made an urgent application to the Liquor Commissioner seeking the imposition of a condition to ban that activity at the premises.

4 Section 43(2)of the Act relevantly provides:

> The licensing authority may impose, vary, suspend or revoke a condition under subsection (1)—
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> …
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> (c) on application by the Commissioner of Police; or
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> …
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> (f) in any other proceedings under this Act involving the licensee; or
>
> (g) if the Commissioner considers the imposition, variation, suspension or revocation of the condition to be in the public interest—on the Commissioner's own initiative.

5 As it was, the Liquor Commissioner had independently become aware of applicant's plans to permit axe throwing at the premises and was concerned about the safety implications of the proposal. Accordingly, the

Liquor Commissioner's delegate contacted the applicant and attended the premises on 29 October 2024.

6 Because the transition to Level Up involved an alteration to the licensed premises, the applicant had sought approval from the Liquor Commissioner in conformity with s 68 of the Act to alter the premises.

7 Upon conducting her inspection, the delegate noted that the approval that the applicant had obtained under s 68 of the Act did not include an approval to create three axe throwing lanes and she immediately brought this to the applicant's attention and of the fact that additional approval was required. Whilst not conceding that approval for this was necessary, the applicant made an application for approval in respect of this.

8 In addition to this, the delegate resolved to use her powers under s 43(2)(g) of the Act. On 31 October 2024, she imposed an interim condition that there shall be no axe throwing activities undertaken at the premises until further order.

9 After conducting a hearing on the papers, the delegate confirmed that order on 28 November 2024. This is the order that is the subject of the within application for review.

10 The delegate noted that the police submitted:

- Hindley Street entertainment precinct was a well-known party precinct where young people gather to consume alcohol and drugs; that it is associated with violence that can sometimes result in serious injury or death, and that it is a Declared Public Precinct that gives the police additional powers to maintain public safety;

- Alcohol and drugs can lead to slower response, delayed reflexes, diminished hand-eye coordination and impaired judgement; and

- Axe throwing within licensed premises poses a serious and unacceptable risk to public order and safety such that permitting the activity was not in the public interest.

11 The delegate recorded that the applicant queried whether it was within the jurisdiction of the Liquor Commissioner to impose a condition banning axe throwing as it was a lawful activity and was not directly related to the service and supply of liquor. She noted that it submitted that axe throwing could legally operate in a non-licensed venue in the same Declared Public Precinct and high-risk location, and that neither SAPOL nor the Liquor Commissioner, would have any ability to impose any restrictions on that business. The applicant sought to draw a positive from this, by submitting

that it was of benefit to the public for this activity to be conducted within the highly regulated environment that comprises of licensed premises.

12 The delegate noted that the applicant proposed various measures to ameliorate risk. These included:

- Having trained staff continuously supervise the axe-throwing lanes; only allowing one person in a lane at a time.
- Limiting participants to two alcoholic drinks before and during their axe throwing and monitoring signs of intoxication.
- Breathalysing patrons before each axe throwing session.
- Requiring patrons involved in axe throwing to sign a waiver acknowledging the risks and the alcohol restrictions.

13 The delegate noted that the applicant submitted that what was proposed was a safer and more regulated activity than driving a car, the driver of which can lawfully operate the car with a blood alcohol reading up to 0.05.

14 The delegate also noted that the applicant, whilst acknowledging that there were public safety issues with Hindley Street, contended that Level Up operates in a manner fundamentally distinct from the traditional late-night venues that contributed to Hindley Street's high-risk designation, and it relied upon its own record of good management and its proposal to limit axe throwing to no later than 11.00 pm, stating that public safety issues with Hindley Street generally occur in the early hours of the morning. The applicant suggested to the delegate a trial period, in the expectation that it would allay the concerns expressed by police.

15 The delegate was satisfied that it was within the Liquor Commissioner's power to impose the condition as it was consistent with one of the stated objects of the Act of facilitating the responsible development of the licensed liquor industry.[1]

16 The delegate observed that Hindley Street is a well-known nightlife area that is considered by police to present a relatively higher risk to public safety, with public order offences, stabbings, assaults and the like, occurring on a relatively regular basis.

17 The delegate accepted that the applicant had identified a significant number of risk mitigation measures and strategies. However, she remained concerned that what was proposed involved exposing people who are participating in axe throwing, the staff supervising them, and

[1] See: s 3(1)(d) of the Act.

non-axe throwing patrons in the venue who may access the area, a safety risk that could result in a catastrophic outcome. She said:

> The Licensee's assertion that the axe throwing area in Level Up is a dedicated space that is partitioned from the rest of the room, is somewhat at odds with what I observed during the site visit. Admittedly, the throwing lanes are separated by mesh partitions, and there is a dedicated space, but only a rope separates the entrance to the axe throwing area from the rest of the room, and an intoxicated person, or one affected by drugs or suffering a mental health episode, would merely need to get past that rope to access the area and potentially get hold of an axe within that area, with potentially catastrophic results.

18 Hence, she imposed the condition to effectively prohibit the axe throwing at the applicant's premises.

19 On review, the applicant tendered an affidavit that attested to the fact that a licensed venue in Victor Harbor provides its patrons with the opportunity to participate in axe throwing of the type contemplated by the applicant. The affidavit also referred to a website of an entity known as Maniax Axe Throwing, which conducts axe throwing at a variety of venues across Australia that are fully licensed.

20 It tendered these in support of a contention that the business model it has implemented at Level Up is consistent with a global trend of combining social interactive entertainment with licensed premises.

21 The affidavit also pointed to the fact that under the revised model that had been provided to the delegate prior to her making her decision, it was proposed that there be a single point of entry into the axe throwing area that was away from the centre of the room.

22 The applicant submitted that this was significant because it demonstrates that the delegate proceeded on a misunderstanding of the facts. It submitted that the misunderstanding was of considerable importance because it was apparent that the delegate's concern that "only a rope separates the entrance to the axe throwing area from the rest of the room" was critical in her decision making process that led to the imposition of the condition.

23 The hearing before this Court commenced with a view of the applicant's premises which are situated on the southern side of Hindley Street. In the area nearest to Hindley Street are four pool tables. Immediately south of that, against the western wall, were three dartboards. There was another area in a separate room, adjacent to the southern side of Hindley Street, where there was a bar and two shuffleboards. As one moves further south

into the premises, there are four more pool tables. In that area is a cupboard attached to a wall, where it is proposed to store the axes to be used in the axe throwing area. Further south again, in the south-western corner of the premises, was a caged area that contains three lanes, which is where the proposed axe games will be played. It must be said that it might be expected than many would regard axe throwing in this area to be an enjoyable experience.

24 During the hearing before this Court, the applicant was asked whether there was any policy in place as to how the axes would be moved to and from the dedicated area to the axe throwing area. This led to the following exchange:

> Mr Lodge: I think the answer to that is "no" - but that is something that could be attended to. I mean, there are a number of policies or measures that could be put in place to ensure that movement from the cupboard to the axe cage doesn't pose any risk. One potential option might be that there be some kind of cupboard - locked cupboard - within the arena itself, if that was considered to be a safer option, so that it didn't have to be walked across the bar area. I mean, that's just one option. But - - -
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> His Honour: I don't expect you to give an answer on the spot today, and I'm going to be reserving in relation to that. But I've got to say: that was a matter that concerned me.
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> Mr Lodge: Yes.
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> His Honour: I think the premises itself has got an overall capacity of about 1400. Now, I can't imagine there would be 1400 people in that area - but it could get quite crowded.
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> Mr Lodge: Yes.
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> His Honour: And it is of - well, it does worry me that there would be axes - there seems to be a good attention to detail of safety inside the cage.
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> Mr Lodge: Yes.
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> His Honour: And it's obviously essential that they be secured into premises that the public can't get access to. And I - - -
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> Mr Lodge: Yes.
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> His Honour: I was comforted by the fact that there was a lock on the door that the public couldn't get into.
>
> Mr Lodge: Yes.

> His Honour: But moving axes to and from the cupboard into the cage area - when there are a lot of people milling about, some of whom might not be - or some of whom might be intoxicated by alcohol or drugs - is a concern.[2]

25 Later, after an adjournment, the applicant indicated a willingness to construct a locked cabinet within the axe-throwing arena to prevent the axes being carried in another part of the licensed premises. It also proposed constructing a gate at the point of entry to the axe throwing area so that access to that area could be more easily controlled.

26 In prosecuting the within application for review, the applicant's overriding submission was that the delegate took an overly cautious approach to the assessment of the risk associated with axe throwing within its premises. It submitted that the risk of injury was remote, and that if a person was motivated to act in the way contemplated by the delegate, such a person would not be deterred from causing injuries or fatalities if there were no axes were on the premises but would instead seek to deploy another object as their weapon.

Consideration

27 Although on the face of it, s 43(2)(g) confers upon the Liquor Commissioner an unfettered discretion, it is not without limitations. The Liquor Commissioner must exercise the discretion reasonably.[3] And the Liquor Commissioner "is not free to apply idiosyncratic notions of public interest".[4] Ultimately, the relevant public interest is defined by the Act itself. And in connection with this, special consideration must be given to the objects of the Act. That is so, because s 3(2) of the Act directs a licensing authority to have regard to the objects in deciding any matter before it under the Act.

28 The objects of the Act are as follows:

> **3 - Objects**
>
> (1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—
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> (a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and

[2] Tr p 7-8.
[3] *Kruger v The Commonwealth* [1997] HCA 27; (1997) 190 CLR 1 at 36, per Brennan J.
[4] *Hogan v Hinch* [2011] HCA 4; (2011) 243 CLR 506 at [31].

> (b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and
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> (c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and
>
> (d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.

29 Section (3)(1a) provides that for the purposes of s 3(1)(a) "harm caused by the excessive or inappropriate consumption of liquor includes":

> (a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and
>
> (b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and
>
> (c) the adverse effects on a person's health; and
>
> (d) alcohol abuse or misuse; and
>
> (e) domestic violence or anti-social behaviour, including causing personal injury and property damage.

30 It must be accepted that the objects of the Act are focussed on matters pertaining to the sale and supply of liquor and the facilitation of the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry.

31 As such, I can accept that it might be regarded as a stretch too far to suggest that the objects include a consideration of activities and behaviours within licensed premises that do not relate to the consumption of liquor, the live music industry, tourism or the hospitality industry.

32 But there are other provisions in the Act that do make it the business of a licensing authority to be concerned with many such matters. And although some primacy must be paid to the objects of the Act, that does not means other provisions in the Act are irrelevant.[5] In conformity with the principle

[5] *Woolworths Ltd v Director of Liquor Licensing* [2012] WASC 384 at [32].

of statutory construction that an Act must be read as a "harmonious whole",[6] the Court must "construe the relevant provision so that it is consistent with the language and purpose of all of the provisions of the statute".[7]

33 With this in mind, regard must be had to s 11A of the Act which authorises the Liquor Commissioner to issue codes of practice that, subject to approval from the Minister, have the authority of regulations within the meaning of the *Subordinate Legislation Act 1978*. They therefore form part of the statutory matrix that defines the scope of the relevant public interest.

34 Pursuant to this, the Liquor Commissioner has issued a Late Night Trading Code of Practice (the Code). Whilst many of the provisions of the Code relate to primarily to the sale and supply of liquor, there are others that are more directed to safety generally and to antisocial or potentially threatening behaviour in and around licensed premises.

35 Clause 8 of the Code requires holders of nominated licences in connection with licensed premises open for trade between 2.01 am and 7.00 am to ensure that at least one staff member is on duty who has been approved as a responsible person under the Act, to have successfully completed nationally accredited first aid training. It can be presumed that it is intended that this person would render first aid to anyone within licensed premises who needed it, however that need arose.

36 Clause 11 of the Code imposes obligations upon such licensees to have licensed security agents use metal detectors after midnight to screen all patrons upon entry onto the licensed premises, to detect persons who may be carrying weapons or other potentially dangerous objects. This plainly anticipates that there might be fights, altercations and acts of intimidation and harassment within licensed premises, that are not necessarily related to the sale and supply of liquor at those premises, but which may escalate if they involve weapons or other potentially dangerous objects, and it expects licensees to play their role in preventing this.

37 Clause 14 requires such licensees, while open for trade, to have a digital CCTV system in place to take visual recordings at all entry and exit points, the footpath immediately adjacent to the licensed premises, and all other internal and external licensed areas of the premises (excluding toilets) to which patrons have access, including areas where adult entertainment is occurring. Apart from providing police with potential evidence to detect

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[6] *Wigmans v AMP Ltd* [2021] HCA 7; (2021) 270 CLR 623 at [77].
[7] *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 at [69].

breaches of the Act and conditions of the licence, and to assist in the prosecution of individuals involved in unlawful activities in and about licensed premises, the mere fact of a CCTV system monitoring the premises may deter persons from committing such activities.

38 Regard must also be had to other provisions of the Act that, independently of the Code, impose obligations that extend to activities and behaviours within licensed premises that do not necessarily relate to the consumption of liquor.

39 Section 117D imposes an obligation upon a licensee, a responsible person for the licensed premises, and an employee or agent of the licensee or responsible person working at the licensed premises, not to allow a person who is wearing or carrying a prohibited item to enter or remain in the licensed premises.

40 Section 124(1) of the Act allows an authorised person, which includes the licensee and a responsible person under the Act, if necessary, to use reasonable force to remove a person from, or prevent the entry of a person onto the licensed premises, if the person is behaving in an offensive or disorderly manner, irrespective of whether the person is affected by alcohol.

41 Section 125 of the Act allows a licensee or a responsible person for licensed premises to bar a person from entering or remaining on the licensed premises for a specified period, if the licensee or responsible person is satisfied that the person has committed an offence, or has behaved in an offensive or disorderly manner, on, or in an area adjacent to the licensed premises. Again, this is irrespective of whether the person is affected by alcohol.

42 Collectively, these inform the breadth of the 'public interest' that the Liquor Commissioner is concerned with in considering whether to impose, vary, suspend or revoke a condition of a licence. They lead to the conclusion that the relevant public interest is not limited to matters pertaining to the sale and supply of liquor, the live music industry, tourism and the hospitality industry and that it extends to matters of safety and preventing and detecting unlawful activities and offensive or disorderly conduct within licensed premises, irrespective of whether it involves persons affected by alcohol or whether it relates to the sale and supply of alcohol.

43 Thus, I am comfortably satisfied that it was within the power of the delegate to impose the condition that is the subject of this review.

44 As to whether a condition is 'necessary', in respect of a change to the state of affairs within licensed premises, I think it is unarguable that the mere possibility for that change to cause harm or ill-health to people within the licensed premises, be they patrons or staff or others, irrespective of whether the harm or ill-health is proved on a balance of probabilities, would be a powerful public interest consideration that might enliven the Liquor Commissioner's discretion under s 43(2)(g) of the Act.[8]

45 Albeit this was said in a different context, the observations made by this Court in *Liquorland McLaren Vale (No. 2)*[9] in respect of concerns about harm minimisation in connection with alcohol availability are apposite to the situation here. It said:

> 'Once there are circumstances prevailing which give the decision-maker pause, or ring alarm bells, a conservative approach is compelled'.
>
> That is not to say that if there is the slightest doubt about the potential for harm minimisation an application must be rejected. If that were so, no application would be granted. But if there is a proper evidentiary basis that raises a legitimate concern, a licensing authority might conclude that caution is required, and it is in the community interest or the public interest, to at least for the time being, refuse the application.[10] (Footnotes omitted)

46 Returning to the facts in this case, the Liquor Commissioner in deciding to invoke s 43(2)(g) of the Act, and this Court when reviewing a decision of the Liquor Commissioner made pursuant to that provision, are entitled to act upon their accumulated knowledge.

47 In *Executive Director of Public Health v Lily Creek International Pty Ltd,* Wheeler J stressed the importance in connection with an assessment of alcohol related harm, to focus on the particular community in which the proposed licensed premises was to operate. He said:

> … where there is already a very high and serious level of alcohol related harm in a community, it may be that the Court would find a relatively small risk of increase in that level of harm to be unacceptable. In other words, it is not the 'risk' of harm in some abstract sense which is relevant, but rather the risk having regard to the proved circumstances **of the particular area in relation to which the application is made**.[11] (Emphasis mine)

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[8] *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258; (2000) 22 WAR 510 at [28]-[29]; *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC 51 at [47].
[9] [2022] SALC 53, [157]-[158].
[10] Ibid at [157]-[158].
[11] [2001] WASCA 410 at [59].

48 The same principle applies in respect of changes to the activities to be conducted within license premises that may impact upon matters of safety and offensive or disorderly conduct within those premises.

49 Both licensing authorities are permitted to know that the Hindley Street entertainment precinct is a well-known party precinct where people gather to consume alcohol, and that some also consume illicit drugs. They are permitted to know that from time to time it is a place where there are issues with breaches of public order, assaults and sadly, occasionally, serious injury and death. They are entitled to assume that even within the trading hours of 11.00 pm, there is a reasonable possibility that there will be persons within the applicant's premises, who will be under the influence of alcohol or illicit drugs, who may behave badly or unpredictably.

50 Thus the fact that axe throwing is conducted in other licensed venues in South Australia and elsewhere in Australia, is not particularly to the point. The delegate was, and on review, this Court is, entitled to take into consideration that the applicant's premises are within an area of Adelaide associated with a greater than normal number of safety issues and offensive or disorderly conduct within licensed premises.

51 It is all very well for the applicant to contend that the risk of injury from axe throwing at its premises is remote. The fact is it is not qualified to make that statement. Indeed, the facts of this case demonstrate that the applicant has been developing its strategy to ameliorate the risk of injury on the fly. It started with a proposal that the entry to the axe throwing would be secured by a rope. It changed this proposal to enhance the security of entry to that area. It now indicates a willingness to move the cabinet containing the axes into the axe throwing area and to fortify its control over entry to that area. It begs that question as to whether further measures are required to make the axe throwing in the premises safe.

52 Without evidence from a suitably qualified expert who has conducted a proper risk appraisal, the Court is not able to know whether the current proposal reflects the implementation of all reasonably practicable measures to ameliorate any potential harm that the introduction of axe throwing at the applicant's premises might cause to patrons and staff.

53 In my opinion, having regard to these matters and the catastrophic injuries that an axe might inflict, the delegate was entitled to have a legitimate concern about the safety of the applicant's proposal and she was entitled to exercise caution and think that even a relatively small risk of increased potential harm was unacceptable. It is a concern and an approach that is shared by this Court.

54 Thus, whilst I accept that the delegate based her decision on an incorrect factual basis, I think she came to the right conclusion. The application for review is therefore dismissed.