

Mr Jesse Markou Licensee Skeeta's on Darby [REDACTED]	Mr Marcel Savary Director Licensing Liquor & Gaming NSW <a href="mailto:marcel.savary@liquorandgaming.nsw.gov.au">marcel.savary@liquorandgamin g.nsw.gov.au</a>	Trudi Cupples Sergeant Newcastle City Police District <a href="mailto:NEWCORRO@police.nsw.gov.au">NEWCORRO@police.nsw.gov.au</a>
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8 February 2021

**Application No.** 1-7418072245

**Application for** Review of a decision made by a delegate of the Independent Liquor & Gaming Authority under section 45(1) of the *Liquor Act 2007*.

**Applicant** Sergeant Trudi Cupples – Licensing Unit, Newcastle City Police District

**Licence name** Skeeta's on Darby

**Licence no.** LIQS220000155

**Premises** Shop 5 97-107 Darby Street, COOKS HILL NSW 2300

**Date of decision** 30 August 2019

**Issue** Whether to confirm, vary or revoke the decision made by a delegate of the Independent Liquor & Gaming Authority under section 45(1) of the *Liquor Act 2007* on 30 August 2019.

**Legislation** Section 36A of the *Gaming and Liquor Administration Act 2007*, Clause 6(a)(i) of the Gaming and Liquor Administration Regulation 2016 and sections 3 and 45 of the *Liquor Act 2007*.

Dear Sir/Madam

**Application for review of decision by a delegate of the Independent Liquor & Gaming Authority  
– Skeeta's on Darby, Newcastle**

On 18 September 2019, the Independent Liquor & Gaming Authority (Authority) received an application for review (Review Application) under section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act) from Sergeant Trudi Cupples of the Newcastle City Police District (Review Applicant).

The Review Applicant sought variation of a decision dated 30 August 2019 (Reviewable Decision) made by Wendy Yeung Wye Kong, Acting Manager of Licensing, in her capacity as a delegate of the Authority (Delegate).

In the Reviewable Decision, the Delegate decided, pursuant to section 45(1) of the *Liquor Act 2007* (Liquor Act) to grant a new small bar liquor licence in respect of a licensed premises proposing to trade under the licensed business name 'Skeeta's on Darby', located at Shop 5 97-107 Darby Street, Cooks Hill NSW 2300 (Premises).

In making the Reviewable Decision, the Delegate did not impose certain conditions on the licence that had been proposed by NSW Police in their submission in response to the licence application.

The Review Applicant does not contest the grant of the licence but seeks variation of the Reviewable Decision so that the proposed conditions are imposed by the Authority.

On 19 September 2019, the Authority wrote to the licensee, Mr Jesse Markou (Licensee) and the Review Applicant inviting submissions in response to the Review Application. A submission was received from the Licensee on 19 September 2019.

At its meeting on 13 November 2019, the Authority considered the review application, the material before the delegate when making the reviewable decision and the Licensee's submission.

In the course of finalising the matter it came to the attention of the Authority that the delegate was inadvertently denied procedural fairness and was not afforded the opportunity to provide a submission in response to the review application. For the sake of procedural fairness, the Authority invited further submissions from Liquor & Gaming NSW (L&GNSW), the Licensee and the Review Applicant.

A submission was received from L&GNSW on 17 September 2020. A subsequent email was received from the Review Applicant advising that all relevant information was provided as part of the review application and their submission in response to the licence application. No further submissions were received from the Licensee.

At its meeting on 14 October 2020, the Authority further considered the review application, all material before the Delegate when making the Reviewable Decision and all further evidence and submissions that were provided during the review process.

The Authority has had regard to relevant legislation including its administrative review powers under section 36A of the GALA Act, the power to determine new licence applications under section 45 of the Liquor Act, the power to impose licence conditions under section 53 of the Liquor Act and the statutory objects and considerations prescribed by section 3 of the Liquor Act.

Pursuant to section 36A(4) of the GALA Act, the Authority has decided to **vary** the Reviewable Decision and impose the following additional conditions upon the licence:

1. The premises is to be operated at all times in accordance with the Plan of Management dated 25 July 2020 as may be varied from time to time after consultation with NSW Police. Any proposed variations relating to service of drink and/or lock-out restrictions must be submitted to Liquor and Gaming NSW for endorsement. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, or Liquor & Gaming NSW inspector.
2. The licensee or a person nominated by the licensee, must attend all general meetings of the Newcastle Liquor Accord and remain present for the entire duration of the said meetings, provided however, that the Accord coordinator has properly advised the licensee in advance and the meeting is properly scheduled and has a set agenda.

Pursuant to section 36C of the GALA Act, the Authority is required to publish a statement of reasons for decisions listed in clause 8 of the Gaming and Liquor Administration Regulation 2016. This statement of reasons has been prepared in the context of a high-volume jurisdiction and will be published to the Department's website as soon as practicable.

If you have any questions about this letter, please contact the Authority Secretariat via email at [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Yours faithfully



Philip Crawford  
Chairperson

For and on behalf of the Independent Liquor & Gaming Authority

## STATEMENT OF REASONS

### Background

1. Pursuant to section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act), the Independent Liquor & Gaming Authority (Authority) is authorised to review certain decisions made under the gaming and liquor legislation by delegates of the Secretary of the New South Wales Department of Industry (now Department of Customer Service) working within Liquor & Gaming NSW (L&GNSW), as well as departmental officers exercising power delegated by the Authority itself.
2. On 18 September 2019, an application for review (Review Application) was lodged by Sergeant Trudi Cupples of the Newcastle City Police District (Review Applicant) in relation to a decision made by Wendy Yeung Wye Kong, Acting Manager of Licensing, in her capacity as a delegate of the Authority (Delegate) under section 45(1) of the *Liquor Act 2007* (Liquor Act) on 30 August 2019 (Reviewable Decision).
3. In the Reviewable Decision, the Delegate decided, pursuant to section 45(1) of the Liquor Act to grant a new small bar liquor licence in respect of a licensed premises proposing to trade under the licensed business name 'Skeeta's on Darby', located at Shop 5 97-107 Darby Street, Cooks Hill NSW 2300 (Premises). In doing so, the Delegate did not impose certain licence conditions that had been proposed by NSW Police and consented to during the licence application process by the licensee, Mr Jesse Markou (Licensee).
4. The new licence permits the sale or supply of liquor for consumption on the Premises during licensed trading hours from 4:00 pm to 11:00 pm Wednesday to Thursday, 3:00 pm to 12:00 midnight Friday to Saturday and 3:00 pm to 10:00 pm Sunday.
5. During the licence application process, the Newcastle City Police District of NSW Police made a submission to the Delegate to the effect that, were the new licence to be granted, it should be subject to seven licence conditions (relating to a plan of management, the hours of operation, drinks not to be sold at any time, restrictions on the sale of alcohol after 10:00pm, adequate supervision, local liquor accord and CCTV).
6. The submission was dated 5 August 2019 and signed by the Licensee to indicate his consent to the imposition of the conditions sought by Police.

### Material considered by the Authority

7. The Authority has considered the Review Application, all material before the Delegate when making the Reviewable Decision and all further evidence and submissions that were provided during the course of this review.
8. The Authority is satisfied, on the basis of the Review Application material, the original Police submission dated 29 July 2019 and the decision dated 30 August 2019, that the Review Application was validly made pursuant to section 36A of the GALA Act, which requires that an application for review of a delegated decision be made by a person who was required to be notified of the application and who made a submission to the Authority or Secretary in respect of that application.
9. A list of the material considered by the Authority in making its decision is set out in Schedule A.

### Review Application

10. By way of the Review Application, Police seek that the Reviewable Decision be varied with the following five conditions being imposed on the licence.
  - a) The premises are to be operated at all times in accordance with the Plan of Management supplied with the liquor application. This may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

- b) The following drinks must not be sold or supplied at any time
    - (i) Any other drink (commonly referred to a “shot” that contains more than 30ml of spirits or liqueur that is designed to be consumed rapidly
    - (ii) Any drink containing alcohol is not to be mixed with an energy drink.
  - c) The following restrictions and conditions will apply upon the sale of alcohol after 10.00pm:
    - (i) No mixed drinks with more than thirty (30) mls of alcohol;
    - (ii) No RTD drinks with an alcohol by volume content greater than 5%;
    - (iii) Not more than four (4) drinks will be served to any patron at the one time;
  - d) The licensee shall ensure, by adequate supervision methods throughout the premises, that no patron stockpiling drinks. For this purpose, stockpiling shall mean that any one patron has more than two (2) unconsumed drinks at any one time (a patron may purchase up to four (4) drinks at one time).
  - e) The licensee or a person nominated by the licensee, must attend all general meetings of the Newcastle Liquor Accord and remain present for the entire duration of the said meetings, provided however, that the Accord coordinator has properly advised the licensee in advance and the meeting is properly scheduled and has a set agenda
11. In the review application, the Review Applicant contends that the uniform imposition of these conditions by licensing decision makers across multiple premises within the Newcastle CBD has been instrumental in the reduction of alcohol related crime and harm minimisation across the Newcastle CBD. The Review Applicant is concerned that without the imposition of these conditions, there will be a rise in alcohol related crime.
  12. The Review Applicant draws the Authority’s attention to two similar applications made previously by Police, which relate to similar types of venues, those being ‘Big Poppy’s’ in 2017 and ‘MEET Restaurant’ in early 2019 where the conditions were imposed by the Authority.
  13. The Review Applicant states that in both instances the Licensee consented to the conditions being placed on the licence through consultation.
  14. The Review Applicant submits that the consultation and initiative to obtain agreed consented conditions which are not onerous, ensure a fair and equitable approach throughout the LGA for new liquor licences and are done so to create a consistent approach to regulating the industry, whilst adhering to the objectives of the Liquor Act.
  15. The Review Applicant states that these conditions have assisted the overall reduction in alcohol related crime and violence which occurs in and around licensed Premises within the Newcastle CBD.
  16. The Review Applicant has conducted a current NSW Police Alcohol Related Crime Information Exchange Report (ARCIE) which stipulates that there are currently 208 on-premises liquor licences within the Newcastle CBD with a percentage of these also having a primary service authorisation, of which a large number are subject to the same conditions.
  17. The Review Applicant submits that Police have liaised with the Licensee of the Premises who signed and consented to the imposition of seven conditions upon the licence should the licence application be granted. These include the five Police conditions under consideration. This consent was evidenced in a document forwarded by Police to licensing staff as part of the Police submission in response to the licence application.
  18. The Review Applicant submits that it has no objection to the grant of the new licence, however requests that the Police conditions be imposed by the Authority, to reduce adverse impact from the operation of the new venue upon the community.

## Consultation on Review

19. On 19 September 2019, the Authority wrote to the Licensee, enclosing a copy of the Review Application and all material before the Delegate and invited any further written submission or evidence in response to the Review Application.
20. On 19 September 2019, the Licensee sent an email submission to the Authority Secretariat advising that he agreed to the conditions as set out by Newcastle Licensing Police and that a meeting had occurred prior to the bar opening where they agreed on a common objective.
21. In the course of finalising the matter it came to the attention of the Authority that L&GNSW, as the Authority's delegated decision maker in the first instance, was inadvertently denied procedural fairness and was not afforded the opportunity to provide a submission in response to the review application before the reviewable decision was made.
22. For the sake of procedural fairness, the Authority wrote to L&GNSW, the Licensee and the Review Applicant on 8 September 2020 inviting a further round of submissions in respect of the Review Application.
23. On 17 September 2020, L&GNSW provided a submission in response to the Review Application which provided information on the Premises, the Newcastle profile, crime data for Cooks Hill and the outlet diversification for both Cooks Hill and Newcastle.
24. L&GNSW submits that Skeeta's on Darby is a family owned small bar within the Cooks Hill precinct which is oriented towards a mature clientele and requests to serve craft beer on tap, wine, limited spirits and a tapas style menu.
25. L&GNSW submits that during the licence application process, the applicant provided a plan of management outlining that the proposed business model is in line with that of its existing operations in Oatley (Skeeta's Local) and Jannali (Skeeta's Southside).
26. L&GNSW submits that the business owner has a history of compliance in operating small bars with no adverse findings noted.
27. L&GNSW further submits that no objections were received from Council or members of the public in response to the licence application.
28. The L&GNSW submission was put to the Review Applicant who, in an email of 2 October 2020, advised that all relevant information was provided as part of the review application and their submission in response to the licence application.
29. No further submissions were received in response from the Licensee.

## Legislative framework

30. The Authority has considered the Review Application, the material before the Delegate and all further submissions during the review process in the context of sections 36A(1)(d), 36A(2), 36A(4), 36C of the GALA Act, Clause 6(a)(i) of the Gaming and Liquor Administration Regulation 2016 and all of the statutory objects and considerations in section 3 of the *Liquor Act 2007*, as set out in Schedule B.

## Reasons

31. On the basis of a document dated 5 August 2019, which was provided by Police and signed by the Licensee, and an email from the Licensee to the Authority's Secretariat dated 9 September 2019, the Authority is satisfied that the Licensee has consented to the imposition of seven conditions upon the licence. They include the Police Conditions which are the subject of this review, and a further two conditions regarding trading hours and CCTV.
32. The Authority notes the submission provided as part of the Review Application which states that in 2007, assaults and anti-social behaviour were well above the State average, and that Police and hoteliers have since worked tirelessly to reduce those rates.
33. The Authority notes that the Review Applicant holds concerns that patrons were attending venues where they were able to consume shots and higher strength alcoholic drinks in

proximity to other later trading venues which have the potential to act as “feeder” venues for the later trading venues in the Newcastle CBD.

34. The Authority notes that to minimise the risks associated with patrons attending later trading venues and showing signs of intoxication after ‘pre-fuelling’, a number of drink restriction conditions were imposed on all new restaurant and hotel liquor licences.
35. The Authority notes the Review Applicant’s submission that, given statistics in Newcastle are still above the state average, there is a need to ensure these conditions continue to be imposed on these licence types as well as small bar licences (following their inception in 2013).
36. The Authority acknowledges the L&GNSW submission that Newcastle has a long and regrettable history of alcohol-related crime and anti-social behaviour, however accepts that the situation has remained stable in recent years.
37. The Authority notes the L&GNSW submission that licence conditions should be targeted and proportionate to the level of risk associated with the business model of particular premises and the community in which the premises are located.
38. The Authority notes the submission of L&GNSW that it may not be appropriate to assume that every operator entering the market will negatively contribute to community amenity.
39. The Authority accepts that small bars operate limited trading hours, and aim to target a mature demographic seeking to pay for a superior product and experience.
40. The Authority notes the business model of the Premises, which is offering a unique and vibrant dining experience targeted towards the mid to upper end of the market.
41. Additionally, the Authority notes that the Premises is of small scale with a patron capacity of 80 patrons and trading hours of no later than 12am midnight.
42. The Authority has formed the view that conditions imposed on liquor licences within the Newcastle CBD should be determined on a case by case basis, taking into account the business model and compliance history of each venue.
43. It is the Authority’s position that, given the above considerations, the Premises is a lower risk venue, and therefore that the imposition of the full suite of conditions is not warranted in this instance.

## **Conclusion**

44. In accordance with section 36A(4) of the GALA Act, the Authority has decided to **vary** the reviewable decision made by the Delegate and impose the following licence conditions that shall operate in addition to the conditions imposed by the Delegate:
  1. The premises is to be operated at all times in accordance with the Plan of Management dated 25 July 2019 as may be varied from time to time after consultation with NSW Police. Any proposed variations relating to service of drink and/or lock-out restrictions must be submitted to Liquor and Gaming NSW for endorsement. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, or Liquor & Gaming NSW inspector.
  2. The licensee or a person nominated by the licensee, must attend all general meetings of the Newcastle Liquor Accord and remain present for the entire duration of the said meetings, provided however, that the Accord coordinator has properly advised the licensee in advance and the meeting is properly scheduled and has a set agenda.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'P. Crawford', enclosed within a thin black rectangular border.

Philip Crawford

Chairperson

For and on behalf of the Independent Liquor & Gaming Authority

## **Schedule A – Material considered by the Authority**

### **Material before the Delegate**

The Delegate provided the Authority with a bundle of all material that was before the Delegate at the time that the Reviewable Decision was made. In summary, that material comprises the following:

1. Application for small bar liquor licence, lodged by the Licensee, Mr Jesse Markou, dated 22 February 2017.
2. Signed copies of the Application Notices including the Police notice and local consent authority notice all dated 4 July 2019.
3. Plan/diagram of the Premises highlighting the proposed licensed area.
4. ASIC Organisation Name Search extract for Skeeta's on Darby, dated 1 July 2019.
5. Current Company Extract form for Crown on Darby Pty Limited, dated 3 July 2019
6. National Coordinated Criminal History Check Certificate, dated 28 June 2019
7. Category B Community Impact Statement, dated 20 August 2019
8. Signed Certification of Advertising for the licence application, signed by the Licence Applicant (Jesse Markou) dated 12 August 2019
9. Appointment of manager notice, dated 12 August 2019
10. A copy of the seven conditions requested by NSW Police in relation to Skeeta's on Darby which the Licensee consented to and signed on 5 August 2019.
11. A copy of Skeeta's on Darby Management Plan
12. Email correspondence from the Licensee dated 26 August 2019, consenting to three conditions as proposed by L&GNSW.
13. A copy of Ms Emma Kennedy's certification in relation to licensee training conducted by Urban E-Learning Pty Ltd on 4 July 2019.

### **Review Application material**

The Review Application Form was filed on 18 September 2019 and included a five-page submission letter dated 9 September 2019 addressing Part 4 of the application form specifying why the Review Applicant is aggrieved by the Reviewable Decision. The following material was attached:

1. A submission from Police dated 29 July 2019 to licensing staff in response to the licence application.
2. A copy of the seven conditions requested by NSW Police which the Licensee consented to and signed on 5 August 2019.
3. A copy of the Reviewable Decision dated 30 August 2019.
4. A copy of the review application dated 28 August 2017 in relation to Big Poppy's, Newcastle
5. A copy of the review application dated 4 April 2019 in relation to MEET restaurant, Newcastle
6. A decision under section 53(1)(b) of the *Liquor Act 2007* in relation to MEET Restaurant, Newcastle, dated 4 July 2019
7. A submission from Police dated 6 February 2019 to licensing staff in response to the licence application for Meet Restaurant, Newcastle.
8. A copy of the six conditions requested by NSW Police in relation to MEET Restaurant which the Licensee consented to and signed on 12 February 2019.



### **Submissions in response to Review Application**

1. An email submission from the Licensee in response to the review application, dated 19 September 2019.
2. A twelve-page submission letter from L&GNSW, dated 17 September 2020, along with the following attachments:
  - a. Newcastle and Cooks Hill Crime Data for July 2015 to June 2020
  - b. Cooks Hill LiveData Report September 2020
  - c. Newcastle LiveData Report September 2020

## **Schedule B - Legislative framework**

1. Section 36A(1)(d) of the GALA Act prescribes a decision of a designated Public Service employee, or other Public Service employee, acting under a delegation given by the Authority in respect of an application made under a provision of the gaming and liquor legislation that is prescribed by the regulations to be a “reviewable decision”.
2. Clause 6(a)(i) of the *Gaming and Liquor Administration Regulation 2016* (“GALA Regulation”) prescribes a decision in respect of an application for the granting or removal of a small bar licence that is made on or after 1 February 2016 to be a reviewable decision.
3. Under section 36A(2) of the GALA Act, subject to subsection (2A), any person who is aggrieved by a reviewable decision may, in accordance with the regulation and on payment of such fees as may be prescribed by the regulations, apply in writing to the Authority for a review of the decision.
4. Section 36A(2A) of the GALA Act, provides that an application for a review of a delegated decision may only be made by:
  - 1) an applicant for, or the holder of, a gaming or liquor licence, or
  - 2) a person:
    - a) who was required to be notified of the application the subject of the delegated decision, and
    - b) who made a submission to the Authority or the Secretary in respect of that application.
5. Section 36A(4) of the GALA Act provides that in determining an application for review, the Authority may confirm, vary or revoke the decision under review.
6. Under section 36C of the GALA Act, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 8 of the GALA Regulation as requiring publication.
7. Clause 8(a) of the GALA Regulation prescribes, for the purpose of section 36C(1) of the GALA Act, a decision by the Authority under section 36A of the Act in relation to a reviewable decision within the meaning of that section, as requiring decisions to be published.
8. In determining the Review Application, the Authority has had regard to the objects and considerations provided by section 3 of the Liquor Act, which states:

### **3 Objects of the Act**

- (1) *The objects of this Act are as follows:*
  - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectation, needs and aspirations of the community,*
  - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practicable regulatory system with minimal formality and technicality,*
  - (c) *to contribute to the responsible development of related industries such as live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
  - (a) *the need to minimise the harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
  - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*

- (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*