



Mr Sean Goodchild Director, Compliance Liquor and Gaming NSW Level 9 323 Castlereagh Street SYDNEY NSW 2000 Sean.goodchild@liquorandgaming.nsw.gov.au	Miss Sunhwa Kim Licensee Shop 13 139 Sussex Street SYDNEY NSW 2000 [private email address not published]	Sergeant Maryanne Stanford NSW Police Sydney City Local Area Command 132 George Street THE ROCKS NSW 2000 Stan4mar@police.nsw.gov.au
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3 July 2018

Dear Ms Kim

Reference No.	DF18/005419
Matter	Notification of a potential first strike offence
Notification submitted by	Sean Goodchild, Director of Compliance Operations, Liquor and Gaming New South Wales
Licensee	Ms Sunhwa Kim
Licence name	Gangnam Station
Licence no.	LIQO624014061
Licence type	On Premises
Premises	Shop 13, 339 Sussex Street SYDNEY NSW 2000
Issue	Whether a first strike should be imposed against Ms Sunhwa Kim
Legislation	Section 144E of the <i>Liquor Act 2007</i>

Determination of a potential first strike offence in relation to Ms Sunhwa Kim, the licensee of Gangnam Station

On 5 March 2018, Mr Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (L&GNSW) submitted to the Independent Liquor and Gaming Authority (Authority) notification that Ms Sunhwa Kim, licensee of Gangnam Station (formerly known as Kobow) had committed a prescribed offence and potentially incurred a first strike (Notification).

At its meeting on 16 May 2018, the Authority considered the Notification and submissions made by L&GNSW and NSW Police in response to the Notification. The Authority notes that the Licensee did not contest the Notification.

The Authority, based on the information before it, is satisfied that the Licensee committed the prescribed offence of 'licensee permit intoxication on licensed premises' and has decided to impose a first strike against the Licensee.

The first strike will commence from 4 July 2018 and will expire on 4 July 2021.

Given the serious harm that arose from the commission of the prescribed offence, the Authority considers it to be in the public interest to take further remedial action against the licence of Gangnam Station (LIQO624014061).

The Authority, of its own initiative, is proposing to take the following additional action against the licence:

1. under section 51(9) of the Act, vary the extended trading authorisation hours in order that the Premises is required to cease the sale and supply of liquor at 12:00 midnight on each night of the week, and
2. under section 53(1)(b) of the Act, impose a condition on the licence requiring a security guard who is RSA qualified to be on the Premises from 8:00pm to midnight.
3. under section 53(1)(b) of the Act, impose a condition on the licence requiring the Licensee to engage a person with a class 2A security licence or otherwise suitably qualified to prepare a Plan of Management (POM),
4. under section 53(1)(b) of the Act, impose a condition on the licence requiring the Premises to be operated in accordance with an approved POM at all times.

At the end of the statement of reasons, the Authority gives notice of its proposal to take the above measures against the licence and invites NSW Police, Compliance Operations Unit of L&GNSW and the Licensee to provide submissions before making a final decision. The timetable for the making of submissions is provided at the end of the statement of reasons.

Details regarding the right to seek a review of the Authority's decision to impose a first strike by the New South Wales Civil and Administrative Tribunal are also provided at the end of the statement of reasons.

If you have any questions about this letter, please contact the Reviews and Secretariat Unit via email at ilga.secretariat@liquorandgaming.nsw.gov.au

Yours faithfully



David Armati
Deputy Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

STATEMENT OF REASONS

Decision

1. On 5 March 2018, Mr Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (L&GNSW) submitted to the Authority notification that the Licensee of Gangnam Station (Premises) had committed a prescribed offence (Notification).
2. The Notification included evidence that NSW Police issued the Licensee two Penalty Notices (PN) for the prescribed offence of *'licensee permit intoxication on licensed premises'* in relation to an incident that occurred at the Premises on 9 November 2017.
3. The Notification also included evidence, by way of Revenue NSW data, that both penalty notices were paid on 1 January 2018.
4. The Authority notes that because the two offences in relation to the licence occurred within a single 24 hour period, they are considered to be a single prescribed offence (Offence) for the purposes of section 144C of the Act.
5. The Authority further notes that the Licensee did not contest the Notification and submissions made by L&GNSW and NSW Police.
6. In accordance with section 144E of the Act, the Authority has decided to impose a first strike against the Licensee.
7. The Authority has also decided, of its own initiative, to take further remedial action against the licence under section 51(9) and 53 of the Act. Notice of this action is provided at the end of this statement of reasons.
8. In reaching its decision, the Authority has had regard to the material before it, the legislative provisions under sections 3, 144B, 144C, 144E, 144F, 144G, 144H, 144M and Liquor Regulation 2008.
9. The first strike will commence from 4 July 2018 and will expire on 4 July 2021.

Material considered by the Authority

10. The Authority has considered the Notification and all submissions received in relation to the Notification.
11. The Authority is satisfied that procedural fairness was afforded to the Licensee and interested parties regarding this decision, as all parties required to be notified were provided with the opportunity to make submissions.
12. A list of the material considered by the Authority in making this decision is set out in the schedule at the end of this statement of reasons.

Legislative framework

13. The Authority has considered the Notification in the context of the following legislative provisions.

Objects of the Act

14. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with expectations, needs and aspirations of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
15. In pursuit of these objects, section 3 requires the Authority to, in exercising its powers under the Act, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor and ensure that the supply of liquor does not detract from the amenity of community life.

Committing a prescribed offence

16. Section 144C of the Act provides that a person commits a prescribed offence if:
 - a) a court convicts the person for the offence (whether or not it imposes any penalty), or
 - b) an amount is paid under a penalty notice in respect of the offence, or
 - c) a penalty notice enforcement order under the *Fines Act 1996* is made against the person in respect of the offence.

17. Section 144B of the Act defines what offences are deemed to be a prescribed offence for the purposes of the Three Strikes Scheme. The list includes an offence against section 73(1) (a) or (b) of the Act permitting intoxication or indecent, violent or quarrelsome conduct.

Strikes incurred by licensees or managers of licensed premises other than club premises

18. Section 144E(1) of the Act provides that a first strike is incurred by a licensee or manager of a licensed premises if;
- a) the person commits a prescribed offence, and
 - b) no other strike is in force against the person when the offence was committed, and
 - c) the Authority decides to impose the first strike because of the seriousness of any harm that may have resulted from, or been associated with the commission of the offence.

Remedial action against licensee or manager of licensed premises

19. Section 144F of the Act provides that the Authority may, if a licensee or manager incurs a first strike, require the person to undertake courses of training or instruction as the Authority considers appropriate for the purposes of managing or reducing the risks that contributed to the commission of the prescribed offence in which the strike was incurred.

Remedial action – imposition of licence conditions

20. Section 144G of the Act provides that the Authority may, if a licensee or manager incurs a first strike, impose conditions on the licence that relate to any one or more of the following:
- a. the use of plans of management and incident registers,
 - b. prohibit the use of glass or other breakable containers on the licensed premises,
 - c. the engagement of persons to promote the responsible service of alcohol on the licensed premises,
 - d. the notification of persons, by the licensee, that the strike has been incurred,
 - e. any other matter that may be prescribed by the regulations.

Authority may impose other conditions in certain circumstances

21. Section 144H of the Act provides that the Authority may impose other conditions on a licensed premises, if the Authority is satisfied that:
- a. there is or has been a practice of terminating the employment of persons as the licensee or manager of the premises primarily for the reason of avoiding remedial action being taken as a result of strikes incurred by such persons, and
 - b. there has been, with the subsequent employment of any person as the licensee or manager of the premises, no improvement in managing or reducing the risks that contributed to the commission of the prescribed offences in respect of which those strikes were incurred.
22. Section 144H also provides that the Authority may impose conditions relating to the employment of a person as the licensee or manager of the licensed premises.

Requirements relating to making of reviewable decisions

23. Section 144M(1)(a) and (b) of the Act sets out who the Authority is required to notify before making a decision and to take into account any submissions received.
24. Section 144M(1)(c) requires the Authority to take into account, to the extent it considers relevant to the decision, each of the following considerations:
- (i) whether the licensed premises was a declared premises within the meaning of Schedule 4 when the offences that caused a strike are alleged to have been committed,
 - (ii) the size and patron capacity of the licensed premises and how this may impact on the ability of the licensee or manager to prevent the commission of prescribed offences,
 - (iii) the history and nature of the commission of prescribed offences by the licensee or manager,
 - (iv) the history and nature of violent incidents that have occurred in connection with the licensed premises,

- (v) whether other action would be preferable,
- (vi) whether there have been changes to the persons who are the licensee, manager or business owner,
- (vii) whether there have been changes to the business practices in respect of the business carried on under the licence,
- (viii) any other matter prescribed by the regulations.

Key findings

25. The Authority is satisfied, based on the liquor licence document provided in the Notification, that Ms Kim is the current licensee of Gangnam Station (formerly known as Kobow) and has held that role since 16 October 2017.
26. The Authority notes from COPS event report number 288414894 (Report) that the Licensee was allegedly in South Korea at the time the Offence occurred on the Premises.
27. Despite having been temporarily away from the Premises at that time, whilst ever she remains the Licensee, the Licensee has an ongoing obligation to have due regard to the following, as prescribed by section 3 of the Act:
- a. the need to minimise harm associated with the misuse and abuse of liquor,
 - 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 does not detract from the amenity of community life.
28. The Authority accepts NSW Police's account of the Offence contained in the Report, which records the following information:
- a. At approximately 7:55 pm on 9 November 2017 three female patrons entered the Premises.
 - b. The three female patrons consumed approximately eight shots of the drink called 'The Peach', which is a brand of alcoholic spirit commonly referred to as soju, while on the Premises.
 - c. Following the seventh shot of soju, two of the female patrons struggled to sit upright, swayed from side to side and slumped back and forward at the table.
 - d. At approximately 8:35 pm a waitress collected two empty bottles of soju from the table that the three female patrons were sitting at, and returned with another bottle of soju approximately one minute later.
 - e. At approximately 8:38 pm all three female patrons consumed an eighth shot of soju.
 - f. After consuming their eighth shot, two of the female patrons collapsed forward on to the table and struggled to sit upright before becoming unconscious.
 - g. Staff and other restaurant patrons carried the two unconscious female patrons from the Premises and placed them on the footpath directly outside of the Premises. One of the female patrons vomited on the floor while being carried out.
 - h. Police patrolling nearby observed a group of people gathered around the two intoxicated and unconscious female patrons on the footpath and attended the scene.
 - i. Police requested an ambulance to attend the scene and the two intoxicated and unconscious females were taken to hospital.
29. On 6 March 2018, Reviews and Secretariat Unit (R&S), L&GNSW, invited NSW Police and the Licensee to provide submissions in response to the Notification.

30. On 10 April 2018, NSW Police requested an extension of one week to make a submission. The R&S Unit granted this request and amended the timetable in respect of all parties, including the Licensee, to allow additional time to make a submission.
31. The Authority is satisfied that the Licensee was provided with a copy of the Notification, which included submissions made by L&GNSW and NSW Police, and had a reasonable opportunity to provide any evidence or submissions in response.
32. The Authority notes that the Licensee did not contest the Notification.
33. The Authority accepts the uncontested submission made by L&GNSW that the Offence resulted in serious actual harm, in the form of two female patrons becoming intoxicated to the point they became unconscious and had to be taken to hospital.
34. The Authority also accepts L&GNSW's uncontested submission that the three female patrons consumed soju in an irresponsible manner and staff made no attempts to stop service once patrons started showing signs of intoxication.

Incurring a first strike

35. Under section 144E of the Act, the Authority, when determining whether a first strike should be incurred against a licensee, must be satisfied that person:
 - a. has committed a prescribed offence, and
 - b. there is currently no other strike in force against them, and
 - c. the Authority decides to impose the first strike because of the seriousness of any harm that may have resulted from or been associated with the commission of the offence.
36. In accordance with section 144C of the Act, a person commits a prescribed offence if an amount is paid under a penalty notice in respect of an offence.
37. Based on the material before it, the Authority notes that the Licensee was issued two PNs for the prescribed offence of '*licensee permit intoxication on licensed premises*' on 24 November 2017.
38. The Authority further notes that because the two offences occurred on the Premises within a single 24 hour period, they are to be taken as a single prescribed offence in accordance with section 144C of the Act.
39. The Authority acknowledges that the PNs issued to the Licensee were paid on 1 January 2018, which triggered consideration of whether a first strike should be incurred against the Licensee.
40. The Authority is satisfied that the Licensee has committed a prescribed offence pursuant to section 144C of the Act. This finding is made based on the Revenue NSW evidence provided in the Notification, which confirms the PNs were paid on 1 January 2018.
41. The Authority, based on the material before it, is also satisfied there is no evidence suggesting any other strike is currently in force against the Licensee.
42. The Authority is satisfied, based on the COPs report evidence, two female patrons became intoxicated to the point of becoming unconscious and had to be taken to hospital. The Authority considers this harm to be of a serious nature to warrant the imposition of a first strike against the licensee.

Statutory considerations under section 144M(1)(c) of the Act

The Authority is satisfied:

- (i) Based on the current violent venue list in schedule 4 of the Act, the licensed premises is not a declared premises.

- (ii) On the basis of a diagram of the Premises, the patron capacity (approximately 100 people) and size of the venue (single level) is not of such a scale that would impact the licensee's ability to prevent the prescribed offence from occurring. The Authority notes, from the COPs report evidence, that the three female patrons displayed noticeable signs of intoxication on multiple occasions while on the Premises and venue staff continued to supply alcohol rather than stop service.
- (iii) On the basis of the material provided by L&GNSW, the Licensee does not have a prior history of committing prescribed offences. The Authority notes the former Licensee incurred a first strike for multiple breaches of the Act under the Three Strikes scheme prior to changes to the Act in 2017.
- (iv) On the basis of the submission made by L&GNSW the licensed premises does not have a history of violent incidents. However, the Authority notes that NSW Police are currently investigating an alleged violent incident in connection to the Premises which occurred on 31 March 2018.
- (v) On the basis of the submission made by L&GNSW, serious actual harm arose from the commission of the prescribed offence and other action under section 51(9) and 53 of the Act in the form of conditions and varying the ETA is warranted in this circumstance.
- (vi) On the basis of the material provided by L&GNSW, there have not been any changes to venue management or ownership.
- (vii) On the basis of the material provided by L&GNSW there have not been any changes to business practices.
- (viii) On the basis of the material provided by L&GNSW there are no other matters prescribed by the regulations the Authority is required to consider.

Conclusion

- 43. Having regard to the material before it, the Authority is satisfied that the Licensee has committed a prescribed offence and there are no other strikes in force against her and serious harm resulted from the commission of the offence.
- 44. Accordingly, the Authority has decided to impose a first strike against Ms Kim under section 144E of the Act.
- 45. The first strike will commence from 4 July 2018 and will expire on 4 July 2021.
- 46. Given the seriousness of the harm that arose from the commission of the prescribed offence, the Authority considers it to be in the public interest to take further remedial action against the licence under section 51(9) and 53 of the Act.
- 47. This action is intended to minimise the harm associated with the misuse and abuse of liquor and encourage responsible attitudes and practices towards the promotion, sale, supply and consumption of liquor.

Notice of proposed action against the licence under section 51(9) and 53(1)(b) of the Act

- 46. In accordance with section 51(9) and 53(1)(b) of the Act, the Authority, of its own initiative, is proposing to take the following action against the licence:
 - 1. Vary the extended trading authorisation (ETA) hours from 2:00am to midnight for each night of the week,
 - 2. Impose a condition on the licence requiring a security guard who is RSA qualified to be on the Premises from 8:00pm to midnight.
 - 3. Impose the following two Plan of Management related conditions on the licence:

1. *The licensee must engage a person who holds a class 2A security licence, or is otherwise suitably qualified, to prepare a plan of management (POM) for the licensed premises and submit the POM to the Authority for approval within 1 month*

The plan should be systems based and adopt a continuing approach to address the following:

- 1) *Compliance with licence conditions and liquor laws.*
- 2) *The responsible service of alcohol.*
- 3) *Minimising disturbance to the neighbourhood particularly addressing effective management of patrons:*
 - a) *who are approaching intoxication, intoxicated, violent, quarrelsome or disorderly,*
 - b) *queuing to gain entry to the premises, and*
 - c) *within and departing the premises.*
- 4) *Effective management and deployment of venue staff particularly addressing:*
 - a) *maintaining an incident register,*
 - b) *security and patron safety,*
 - c) *crime scene management procedures, and*
 - d) *induction and training.*
- 5) *Appropriate responses to concerns raised by NSW Police or residents affected by the operation of the licensed premises.*

2. *The premises is to be operated at all times in accordance with the Plan of Management dated <insert date> as 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.*

47. NSW Police and L&GNSW are invited to provide submissions in response to the Authority's proposal to take the above action and will have until 17 July 2018 should they wish to do so.
48. Pursuant to section 51(13) and 53(4) of the Act, Ms Kim will then have until 31 July 2018 to provide any final submissions in reply to the Authority's proposed action before the Authority makes its decision.
49. Submissions should be made to the Reviews and Secretariat Unit via email at ilga.secretariat@liquorandgaming.nsw.gov.au and a copy provided to each of the parties to whom this letter is addressed.

Yours faithfully



David Armati
Deputy Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <http://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

Schedule of Material

Material considered by the Authority

1. Notification of potential first strike from L&GNSW, dated 5 March 2018, which comprised of:
 - a. Copy of COPS event 288414894,
 - b. L&GNSW liquor licence records as at 2 January 2018 setting out the key liquor details for the licence of Kobow (now known as Gangnam Station).
 - c. Extract of Police penalty notice data received 29 November 2017.
 - d. Extract of Revenue NSW penalty notice data received 13 February 2018.
 - e. SDRO report provided by NSW Police showing payment of the infringement notice issued to Mr Woolston, extracted 3 January 2018
2. Submission from L&GNSW in relation to the Notification, dated 5 March 2018.
3. Email submission from NSW Police in relation to the Notification, dated 12 April 2018.