



Mr Se-yoon Kim
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10 March 2017

Dear Mr Kim

APPLICATION NO: 1-4931293807
APPLICATION FOR: Extended Trading Authorisation (ETA)
PROPOSED TRADING HOURS: Consumption on premises
Monday to Saturday 10:00AM – 3:00AM
Sunday 10:00AM – 12:00AM
CURRENT TRADING HOURS: Consumption on premises
Monday to Saturday 10:00AM – 12:00AM
Sunday 10:00AM – 10:00PM
APPLICANT: Mr Hyungjae Park
LICENSED PREMISES NAME: Naruone
PREMISES LOCATION: LG 373-375 Pitt St
SYDNEY NSW 2000 (Premises)
ISSUE: Whether to grant or refuse an application for
an extended trading authorisation.
LEGISLATION Sections 3, 11A, 45, 48, 49, 51 *Liquor Act*
2007

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR
EXTENDED TRADING AUTHORISATION – NARUONE**

The Independent Liquor and Gaming Authority considered application number 1-4931293807 at its meeting on 8 February 2017 and, pursuant to section 49(2) of the *Liquor Act 2007*, decided to **grant** the application for an extended trading authorisation subject to the following new licence conditions and variations to existing licence conditions, in addition to other conditions already on the licence:

1. Trading hours

Consumption on premises

Monday to Saturday	10:00AM – 1:00AM
Sunday	10:00AM – 12:00AM

2. CCTV footage on premises:

The Licensee shall maintain a CCTV system that meets the following minimum requirements:

- a) A camera must be located at the main entrance to the venue and positioned to record any person entering through this entrance. The CCTV recordings of this camera must be sufficient to enable an individual to be identified, beyond reasonable doubt, when:
 - i. the person represents not less than 100% of screen height, and
 - ii. there is an unobstructed view of the person's face.
- b) In addition, CCTV cameras must be maintained throughout the premises with camera coverage to specifically record images of the following areas:
 - i. all other public entrances and exits, whether or not in use at the time,
 - ii. staircases,
 - iii. all portions of the floor area accessible to the public where entertainment is provided,
 - iv. toilet external entrances,
 - v. all public accessible areas within the premise excluding toilets and accommodation rooms,
 - vi. the footpath area directly adjacent to the premises, and
 - vii. courtyard and smoking areas.
- c) The CCTV recordings of the cameras referred to in sub condition (b) must be sufficient to enable the recognition of a person. A viewer must be able to say with a high degree of certainty whether or not an individual shown is the same as someone they have seen before, when:
 - i. the person represents not less than 50% of screen height, and
 - ii. there is an unobstructed view of the person's face.
- d) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.
- e) Camera recordings must meet the standards set in sub condition (a) and (c) at all times, either by way of camera positioning, camera shades or other environmental factors.
- f) Recordings must:
 - i. be in digital format,
 - ii. record at a minimum of ten (10) frames per second, and
 - iii. commence one hour prior to opening, and operate continuously until at least one hour after closure.
- g) The correct time, date and camera identification must be automatically embedded on all recordings and be able to be read when the image is played back on a different system without interfering with the view of the target area.
- h) Recordings should be retained for a period of 30 days before being reused or destroyed. The licensee shall ensure that no person is able to delete or alter any recordings within the 30 day period.
- i) When the venue is open and trading, at least one person shall be at the venue who is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.
- j) Immediate access to the CCTV system and the ability to review recordings on the system is to be granted to NSW Police, Liquor & Gaming NSW Inspectors or other

regulatory officers upon request.

- k) The CCTV system shall be able to reproduce a copy of the recordings on Compact Disc, DVD or USB memory stick and must, upon request, be provided within one working day to NSW Police, Liquor & Gaming NSW Inspectors or other regulatory officers.
- l) Prior to the commencement of trade each day, the CCTV system shall be checked to ensure the equipment is in full operating order. If, during the daily check or at any other time, it is discovered that the equipment is not in full operating order, the licensee is to notify the Local Area Commander or delegate within two hours. All reasonable steps must be undertaken to repair the system as soon as practicable. The Licensee shall record this daily checking activity in the incident register book that meets the standards required by the Licensing police and Council.

- 3. Patron capacity is limited to 96 persons on the licensed ground floor area. All persons consuming alcohol must remain seated at all times.

4. **Signage to be displayed**

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected near the main principal entry to the premises, in such a manner that it would be reasonable to expect that a person leaving the premises will be alerted to its contents. The signage shall state:

Upon leaving please respect local residents by minimising noise.

5. **Neighbourhood amenity**

- a) The management of the premises:
 - i. Shall ensure patrons do not crowd or loiter in the vicinity of the premises in such a manner that pedestrian movement is obstructed or hindered.
 - ii. Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council, the Management is to employ private security staff to ensure that this condition is complied with.
 - iii. Shall record in a Register full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
 - iv. Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management / staff to resolve such complaint/s shall be recorded in the Register.
- b) An **adequate queuing system** for patrons must be implemented at the main entrance of the licensed restaurant so as to ensure that if patrons are queuing to gain entry they do not obstruct or impede pedestrian traffic flow.

6. **Crime scene preservation**

Immediately after the person in charge of the Licensed Premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:

- a) Take all practical steps to preserve and keep intact the area where the act of violence occurred
- b) Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by the NSW Police
- c) Make direct and personal contact with the Local Area Command or his/her delegate and advise the Commander or delegate of the incident and
- d) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

7. Entertainment noise, music and live entertainment

- a) Any noise complaints are to be recorded in the Incident Register and provided to authorised officers upon request.
 - b) The Licensed Premises are not to be themed or operated as a Nightclub.
 - c) No DJ styled booth, no disco lighting systems are to be utilised at any time on the premises.
 - d) No Dance floor is to be located on the premises or installed to support entertainment.
 - e) Entertainment is strictly limited to light entertainment which includes background music, (no DJs undertaking live mixing for dancing, live bands or concert performers are allowed).
8. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of obtaining the extended trading authorisation.
9. The premises are to be operated at all times in accordance with the Plan of Management dated January 2017 as may be varied from time to time after consultation with the Local Area Commander.
10. The premises are only permitted to trade the hours approved by the local consent authority for the trial period whilst it remains in force

If you have any enquiries about this letter, please contact the case manager via email to trudy.tafea@justice.nsw.gov.au

Yours faithfully



Philip Crawford

Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

DECISION

1. The Independent Liquor & Gaming Authority (“the Authority”) is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the application lodged 13 September 2016 (“the Application”) for an extended trading authorisation (“ETA”), as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision.
2. The Authority refuses to grant the ETA to allow trade until 3.00am Monday – Saturday on similar grounds as its previous refusal of the application lodged in 2013 which sought to vary the Premises’ then existing ETA from 1.00am close to 3.00am close Monday – Saturday.
3. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the *Liquor Act 2007* (“the Act”) that the overall social impact of granting this authorisation for an additional hour Monday – Saturday and an additional two hours on Sundays would not be detrimental to the well-being of the local and broader communities. The Authority is, however, not satisfied that the overall social impact of granting the authorisation for the period between 1.00am and 3.00am Monday – Saturday would not be detrimental to the well-being of the local and broader communities.
4. The Application is granted pursuant to section 49(2) of the Act. For the purposes of section 49(6) the extended licensed hours granted pursuant to this decision extend from midnight to 1:00 am Monday through Saturday and 10:00pm to 12:00am Sunday. These extended trading hours apply to the entirety of the licensed area of the Premises.
5. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2).

MATERIAL CONSIDERED BY THE AUTHORITY

6. In making this decision, the Authority has considered the Application, the accompanying Community Impact Statement (“CIS”) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to relevant liquor licensing records maintained by Liquor & Gaming NSW (“LGNSW”), Bureau of Crime Statistics and Research (“BOCSAR”) crime data and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. The material considered pursuant to the making of this decision is listed and, in some cases, briefly summarised in the Schedule.

LEGISLATIVE FRAMEWORK

7. The legal requirements for the making of a valid application for an ETA are provided by section 51 of the Act and the *Liquor Regulation 2008* (“the Regulation”). The power to grant an application for an extended trading authorisation is provided by section 49(2) of the Act.
8. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3, which prescribes the regulation of the supply of liquor in a way that is consistent with the expectations and needs of the community, alongside the facilitation of the balanced development of the liquor industry and related industries. Section 3 also requires attention to be paid to harm minimisation and the need to ensure that the sale of liquor does not detract from the amenity of community life.
9. Section 48 of the Act requires a Category B Community Impact Statement (“CIS”) to be lodged with an extended trading authorisation application and that the Authority, in making its decision, consider the CIS (as well as any other matter the Authority is made aware of during the application process) in order to determine the impact of the authorisation.
10. Section 48 further prescribes that the Authority must not grant an application unless satisfied that the “overall social impact [...] **will not** be detrimental to the well-being of the local or broader community”.
11. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the suburb of Sydney while the “broader community” comprises the relevant local government area (“LGA”) of Sydney.

KEY FINDINGS

12. The Authority is satisfied, based on the Application and CIS material before it, that for the purposes of Section 51(2) of the Act, the Application has been validly made and minimum procedural requirements have been satisfied.
13. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed extended trading hours fall within the scope of the development consent that is in force with respect to the Premises. This finding is made on the basis of the modified development approval number D/2014/820/A that was determined by City of Sydney Council on 9 May 2016, which restricts the hours of use to between 7.00 am and 3.00 am, Monday to Sunday, for a one year trial period.
14. The Authority is satisfied, for the purposes of section 49(8) of the Act, that responsible service of alcohol practices are currently in place and will remain in place at the proposed licensed premises (“the Premises”). This finding is made on the basis of the *Plan of Management* dated January 2017 and provided by the Applicant.
15. However, also for the purposes of section 49(8) of the Act, the Authority is not satisfied that the extended trading period sought in the Application will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the Premises. While the measures outlined in the *Plan of Management* may

mitigate the impact of the late operation of the Premises, the Authority is not sufficiently satisfied that those measures will enable the licensee to sufficiently monitor or respond to patron disturbance occurring in the neighbourhood of the Premises later than 1.00 am.

Social Impact – Positive Benefits

16. The Authority accepts the Applicant's contention that it distributed the consultation notice to stakeholders and neighbouring premises and did not receive any adverse comments or complaints. Objections were, however, received by LGNSW from a neighbouring occupier and NSW Police.
17. The Authority is satisfied that granting the extended trading authorisation will provide some additional benefit, by way of convenience, to members of the local and broader community who wish to enjoy the licensed facilities of the restaurant beyond the current closing time of midnight.
18. The Authority is satisfied that City of Sydney Council has no concerns in respect of the Application.
19. The Authority is satisfied, based on its regular recourse to LGNSW licence records, that while there are an extensive number of on-premises licences trading within the suburb of Sydney, that granting the ETA to 1.00am Monday – Saturday and midnight on Sunday will, to a moderate extent, diversify the range of *late* trading licensed entertainment options available within the local community.
20. On 31 October 2012 the Authority granted an ETA to 1.00am Monday – Sunday . The ETA was surrendered on 17 July 2015 upon the expansion of the Premises, on the basis that development approval at that time did not permit the extended hours. Since that time the Premises has operated until midnight Monday – Saturday and 10.00pm Sunday. The Authority is satisfied that whilst the ETA was in force the Premises operated until 1.00am without issue. The Authority is aware that shortly after the surrender of the ETA there were some minor licence breaches detected by NSW Police on a single occasion, all of which were immediately corrected.
21. On this basis, the Authority is satisfied that granting the Application (to 1.00am Monday – Saturday and 12.00am Sunday) will reasonably develop, in the public interest, the liquor, tourism and hospitality industries in respect of the local and broader communities.

Social Impact – Negative Impacts

22. The Authority notes that there are a significant number of on-premises licensed venues in Sydney suburb, which is a symptom of its functioning as a capital city. Although granting this Application will not increase Sydney's licence density, it will increase the number of licensed premises that trade past midnight.
23. The Authority acknowledges that there is a risk that any venues licensed for on-premises consumption when operating during extended trading hours may cause adverse social impacts upon the community over time, including amenity impacts upon the neighbourhood and local community. This is exacerbated in this instance by the location of the Premises in an area where amenity impacts are already being

experienced, as evidenced by BOCSAR data and the submissions received from NSW Police and a neighbouring occupier.

24. The Authority notes that there is cause for concern arising from the BOCSAR Crime Maps for the year ending September 2016, which indicate that the Premises is located in an area where there are high concentrations of relevant offences. This concern is heightened by the proposal that the Premises remain open until 3.00am, as COPS data provided by NSW Police indicates that alcohol-related violence is at a critical level in the Sydney CBD between midnight and 4.00am on Fridays and Saturdays. Granting the ETA to 3.00am would increase the likelihood of generating and receiving patrons who are migrating to and from the Premises during this critical period. Whilst the behaviour of some of the migrating patrons may fall short of criminal, it is likely that patrons will contribute to noise and other forms of disturbance to local residents, at a time when most other venues in Sydney suburb have closed.
25. There is also cause for concern with respect to the broader community arising from the BOCSAR crime data for 2014-2015 which indicates that the Sydney LGA has significantly higher rates per 100,000 persons than NSW as a whole for incidents of relevant alcohol-related offences. Although this is a function of the area's status as an international tourist destination and busy capital city CBD, the high prevailing rates of alcohol-related crime mean that any proposed extended trading authorisation warrants careful scrutiny as to the social impact of extending liquor supply during later, higher risk times of the day and week.
26. Despite the above, the Authority derives substantial reassurance from the fact that an ETA allowing the Premises to remain open until 1.00am Monday – Sunday was previously exercised for a number of years, without occasioning any significant alcohol-related disturbances.
27. The Authority accepts as genuine the concerns raised in the NSW Police and neighbouring occupier submissions, however notes that these submissions were lodged in response to the Application for an ETA to 3.00am Monday – Saturday. The neighbouring occupier, who resides approximately 50 metres from the Premises, claims that he is routinely confronted by cigarette smoke, litter and vomit, and disturbed by noise and other forms of offensive behaviour late into the night, including after 1.00am, as a result of a recently opened licensed venue in the basement of the building in which he resides. The submitter suggests that the current level of disturbance will increase if the application is granted, presumably due to migration of patrons departing from Naruone.
28. The Authority has had regard to the reasonably detailed harm minimisation measures set out in the *Plan of Management* dated January 2017, and the licence conditions to which the Applicant has consented, which go some way to mitigating the concerns outlined above. However, the Authority is not satisfied that these measures will enable the Applicant to adequately manage patron disturbance occurring in the neighbourhood of the Premises were the Premises to remain open until 3.00am Monday – Saturday.
29. The Authority notes, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data, that the suburb of Sydney ranked in the 7th decile on the Index of Relative Socio-Economic Advantage and Disadvantage while the City of Sydney

LGA ranked in the 9th decile (with a decile ranking of 10 being the most advantaged).

Decision Date: 8 February 2017



Philip Crawford
Chairperson

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 <https://www.liquorandgaming.justice.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

Material before the Authority

1. ABS SEIFA data based on the 2011 Census indicating that Sydney suburb ranked in the 7th decile and Sydney LGA ranked in the 9th decile compared to other local government areas and suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).
2. The Authority's Statement of Reasons for its decision to refuse application 1-2025682335, which sought to vary the Premises' then existing ETA from 1.00am close to 3.00am close Monday – Saturday, dated 25 February 2014.
3. Report on NSW Recorded Crime Statistics July 2010 – June 2015 obtained from published BOCSAR sources, for July 2014 – June 2015. This data indicates that:
 - (a) the rate of alcohol-related *assault police* incidents recorded by NSW Police for Sydney LGA was **85.2** per 100,000 persons, well above the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of alcohol-related *non-domestic violence related assault* incidents recorded by NSW Police for Sydney LGA was **796.6** per 100,000 persons, significantly above the State-wide rate of **144** per 100,000 persons;
 - (c) the rate of alcohol-related *domestic violence related assault* incidents recorded by NSW Police for Sydney LGA was **213.3** per 100,000 persons, well above the State-wide rate of **122.6** per 100,000 persons; and
 - (d) the rate of alcohol-related *offensive behaviour* offences recorded by NSW Police for Sydney LGA was **525.4** per 100,000 persons, substantially above the State-wide rate of **88.2** per 100,000 persons.
4. D/2014/820/A determined by City of Sydney Council on 9 May 2016, which modified approval for the change of use of a retail shop to a licensed Korean restaurant, restricting the hours of use to between 7.00 am and 3.00 am, Monday to Sunday, for a one year trial period.
5. Submissions from City of Sydney Council dated 27 May 2016 and 19 July 2016 advising that it “has no matters of concern” in respect of the Application.
6. Submission from a neighbouring occupier dated 11 June 2016, objecting to the application on the grounds that local residents are already being disturbed by patrons attending a recently opened licensed premises in the basement of the building in which the submitter resides. The submission claims that residents are routinely confronted by cigarette smoke, litter and vomit, and are disturbed by noise and other forms of offensive behaviour late into the night, including after 1.00am, and that this disturbance is likely to increase if the application is granted.
7. BOCSAR Crime Maps for the year ending September 2016 detailing hotspots for the concentration of offences near the location, indicating that the Premises:
 - (a) is located within a *high-density hotspot* for incidents of *domestic assault*
 - (b) is located within a *high-density hotspot* for incidents of *non-domestic assault*
 - (c) Is located within a *high-density hotspot* for incidents of *malicious damage to property*.

8. Application form lodged on 13 September 2016.
9. Plan of existing licensed area to which the ETA is sought to apply, lodged 13 September 2016.
10. House Policy for the Premises lodged with the application on 13 September 2016.
11. CIS lodged 13 September 2016, advising that no issues were raised by any neighbouring occupiers or stakeholders.
12. Email from LGNSW to the Applicant's solicitor, Mr See-yoon Kim of Shinwoo Lawyers making various requisitions, dated 17 November 2016.
13. Liquor licensing records from LGNSW as at 5 December 2016 indicating that Sydney suburb had 526 on-premises licences, 20 registered club licences and 142 hotel licences.
14. Submission from Compliance Operations LGNSW dated 14 December 2016 advising that the Application was assessed using the EVAT and that LGNSW does not intend to carry out any further assessment.
15. Email from LGNSW to Mr Kim attaching the EVAT for comment, dated 16 December 2016.
16. Submission from Constable Ivan O'Donnell, Sydney City Local Area Command ("LAC") of NSW Police to LGNSW, dated 6 January 2017, raising the following points:
 - Various breaches were detected at the Premises on 26 September 2015, including staff selling liquor without a current RSA qualification, failure to produce licence upon request, prescribed signage not displayed and various others licence conditions not complied with.
 - 49% of all assaults and 36% of all domestic violence occurring between 1 September 2015 and 31 August 2016 in Sydney City Local Area Command were alcohol-related.
 - 2011 research indicates that "in Sydney LGA assaults are more likely to occur around licensed premises than elsewhere".
 - COPS data indicates that alcohol-related violence is at a critical level between midnight and 4.00am on Fridays and Saturdays.
 - NSW Police objects to the application and requests that a number of conditions be imposed should the application be successful.
17. The Applicant's detailed *Plan of Management*, dated January 2017.
18. Email from LGNSW to Mr Kim, attaching the NSW Police submission for comment, dated 13 January 2017.
19. Submission from Mr Kim dated 23 January 2017, raising the following matters in response to the LGNSW emails dated 17 November 2016, 16 December 2016 and 13 January 2017:

- The breaches detected by NSW Police occurred at a time when the business owners, managers and staff were “in the process of adjusting to relevant rules and regulations”. Given that this was the first and only occasion upon which breaches were detected, NSW Police issued the Applicant with a warning. The Applicant immediately acted to correct relevant procedures in accordance with legislative requirements.
- The Premises is located some 50m from the residence of the neighbouring occupier who objected to the application, and operates as a genuine restaurant serving Korean cuisine. The Premises has not been associated to any significant degree with alcohol-related violence or anti-social behaviour since its licence was issued in 2011.

20. Licence document for Naruone LIQO660011302 as at 24 January 2017.

21. Google Maps satellite map, road map and street view image indicating the location of the Premises, provided by LGNSW on 25 January 2017.