



Mr Michael Marr
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24 August 2017

Dear Mr Marr

Application No.	APP-0002820775
Application for	On-Premises Liquor Licence with Primary Service Authorisation and Extended Trading Authorisation
Proposed Trading Hours	<u>Consumption on premises</u> Monday to Sunday: 12:00pm -3:00am
Applicant	Mr Djordje Sevic
Licensed premises name	Gipsy Kings
Premises	Level 1, 265-273 Illawarra Road MARRICKVILLE NSW 2204
Issue	Whether to grant or refuse an application for an on-premises liquor licence with a primary service authorisation and extended trading authorisation
Legislation	Sections 3, 11A, 21-28, 40, 45, 48, 49 and 51 <i>Liquor Act 2007</i> Regulation 19 <i>Liquor Regulation 2008</i>

**Decision of the Independent Liquor and Gaming Authority
Application for an on-premises liquor licence with extended trading authorisation and
primary service authorisation – Gipsy Kings, Marrickville**

At its meeting on 19 July 2017, the Independent Liquor and Gaming Authority (Authority) considered application number APP-0002820775 filed on 28 March 2017 seeking the grant of a new on-premises liquor licence (Application) with associated applications for an extended trading authorisation and a primary service authorisation, in respect of premises located at 265-273 Illawarra Road, Marrickville NSW 2204.

The Authority has decided to **grant** the Application pursuant to section 45 of the Act. However, the Authority has decided to **refuse** the application for an extended trading authorisation under section 49(2) of the Act and **refuse** the application for a primary service authorisation under section 24(3) of the Act. Refusal of these licence related authorisations has been made on the basis that the Authority is *not* satisfied, for the purpose of section 48(5) of the Act, that the overall social impact of granting either authorisation will not be detrimental to the well-being of the local community of Marrickville.

The Application is granted subject to the following conditions:

1. *Section 11A of the Liquor Act 2007 applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00 AM and 10:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.*

2. *Consumption on premises*

Good Friday 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)

Christmas Day 12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)

December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

3. *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 this licence.*

4. *The licensee must ensure that all patrons have an allocated seat when served or supplied alcohol, or while consuming alcohol.*

5. *The licensee must ensure that the number and location of tables and chairs provided for seated dining is in accordance with the approved floor plan at all times.*

6. *There is to be no stockpiling of drinks commonly known as shots, shooters, slammers or bombs that are designed to be consumed rapidly, or any alcoholic drinks that are mixed with an energy drink. Not more than one of these types of drinks is to be served to a patron at the one time.*

7. *The licensee must ensure that the behaviour of patrons entering/leaving the premises does not detrimentally affect the amenity of the neighbourhood.*

8. *The premises is to be operated at all times in accordance with the Plan of Management dated 15 June 2017 as may be varied from time to time after consultation with the Local Area Commander of 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.*

9. *The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence.*

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

Interior noise levels which, although restricted in accordance with the above condition, still exceed safe hearing levels, are in no way supported or condoned by the Authority.

10. *All liquor sales are to cease half an hour prior to the end of trade.*

11. *The licensee must maintain an incident register in the form and manner approved by Liquor and Gaming NSW for all incidents. The incident register must be separate from the incident register maintained by the security contractor for their records. The incident register must be produced on request by Police or Licensing Inspectors.*

12. *At all times the premises is to operate as a restaurant (as defined by the Liquor Act), that being its primary business purpose.*

13. *The licensee will not host alcohol only events, such as dance parties, live entertainment events or operate the premises in the manner of a nightclub or bar. Note: This requirement is not intended to exclude entertainment or other live performances, which are provided ancillary to the primary purpose of the restaurant.*

14. *The kitchen is to remain open and a substantial food service is to be available during all hours of operation and during the entire time alcohol is being served.*

15. *The licensee, or his/her representative, must be present during all functions held at the licensed premises.*

16. *All doors and windows to the licensed premises are to be kept in the closed position after 7:00 PM Mondays to Sundays.*

17. *A minimum of one (1) licensed security/crowd controller is to patrol the premises from 9:00 PM to 30 minutes after close on Thursday, Friday and Saturday nights.*

18. *An area radius of 20 metres surrounding the licensed premises is to be kept clean of rubbish and debris arising from the trading of the premises between the hours of 9:00 PM to 30 minutes after close on all days of trade.*

19. *All liquor shall be opened by staff and no liquor shall be sold or supplied under the licence in unopened cans or bottles.*

20. *No strobe, intermittent or blinking lights are to be employed at the premises at any time.*

21. *No games machines, pinball machines or other entertainment machines are to be utilised in the venue*

22. *No queuing is to occur at the licensed premises at any time. In the event the premise is at capacity, the additional persons must be moved on from the immediate vicinity.*

23. *Signage is to be displayed at every entrance/exit to the premises so as to be clearly visible to patrons, advising patrons that they are to leave the area quickly and quietly and not to cause any disturbance to the neighbours.*

24. *The licensee or its representative must join and be an active participant in the local liquor accord.*

25. Closed-circuit television system

I. The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:

- a. the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of premises that is not required to cease trading, continuously at all times),*
- b. recordings must be in digital format and at a minimum of six (6) frames per second,*
- c. any recorded image must specify the time and date of the recorded image,*
- d. the system's cameras must cover the following areas:
all entry and exit points on the premises,
the footpath immediately adjacent to the premises, and
all publicly accessible areas (other than toilets) within the licensed area.*

II The licensee must also:

- e. keep all recordings made by the CCTV system for at least 30 days,*
- f. ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and*
- g. provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.*

26. Crime Scene Condition

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- a. take all practical steps to preserve and keep intact the area where the act of violence occurred,*
- b. retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor & Gaming NSW website,*
- c. make direct and personal contact with the NSW Police Local Area Commander 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.*

In this condition, 'staff' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.

Attached is a statement of reasons for the Authority's decision, prepared in the context of a high-volume jurisdiction requiring the publication of reasons as soon as practicable. If you have any questions, please email santina.causa@justice.nsw.gov.au

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', with a stylized flourish at the end.

Philip Crawford

Chairperson

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

Statement of reasons

Decision

1. On 28 March 2017, the Independent Liquor and Gaming Authority (Authority) received through Liquor and Gaming NSW (L&GNSW) an application for a new on-premises liquor licence (Application) in respect of premises located at 265-273 Illawarra Road, Marrickville NSW 2204 (Premises). The Application was accompanied by associated applications for an extended trading authorisation (ETA Application) and primary service authorisation (PSA Application).
2. Pursuant to section 45 of the *Liquor Act 2007* (the Act), the Authority has decided to grant the Application.
3. However, the Authority has decided to refuse both the ETA Application, pursuant to section 49(2) of the Act, and the PSA Application, pursuant to section 24(3) of the Act.
4. The ETA Application and the PSA Application are both refused on the basis that the Authority is *not* satisfied, for the purpose of section 48(5) of the Act, that the overall social impact of granting the authorisations will not be detrimental to the well-being of the local community of Marrickville.
5. In reaching this decision, the Authority has had regard to all the material before it, the legislative requirements under sections 3, 11A, 40, 45, 48, 49 and 51 of the Act, and relevant provisions of the *Liquor Regulation 2008* (the Regulation).

Material considered by the Authority

6. The Authority has considered the Application, the accompanying Community Impact Statement (CIS), and all submissions received in relation to the Application.
7. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
8. As foreshadowed in the Authority's *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records, Bureau of Crime Statistics and Research (BOCSAR) crime data, NSW Department of Health *HealthStats* data, and Australian Bureau of Statistics (ABS) socio-demographic data pertaining to the local and broader communities obtained by L&GNSW staff from publicly available sources.
9. The material considered by the Authority is listed in the Schedule, with a summary where appropriate.

Legislative framework

10. The Authority has considered the Application in accordance with the following legislative provisions.

Objects of the Act

11. The objects of the Act, as set out in section 3(1), are to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community; to facilitate the balanced development, in the

public interest, of the liquor industry, through a flexible and practical regulatory system with minimum formality and technicality; and to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

12. In the pursuit of these objectives, section 3(2) requires the Authority, when determining a liquor licence application, to have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm from violence and anti-social behaviour); the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Minimum procedural requirements

13. Section 40 of the Act and the liquor regulations prescribe the minimum procedural requirements for a liquor licence application to be validly made to the Authority.
14. Section 51 of the Act prescribes further minimum procedural requirements for a licence-related authorisation, including an extended trading authorisation and a primary service authorisation, to be validly made to the Authority.

Fit and proper person, responsible service of alcohol and development consent

15. Section 51(3) of the Act provides that when determining an application for a licence-related authorisation, the Authority has the same powers in relation to the application as the Authority has in relation to an application for a licence.
16. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
 - the applicant is a fit and proper person to carry on the proposed business,
 - practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - if any applicable development consent (DC) is required to use the premises for the business or activity to which the licence relates, such consent is in force.

Restrictions on granting extended trading authorisations

17. Section 49(8) of the Act provides that the Authority must not grant an extended trading authorisation in respect of licensed premises unless the Authority is satisfied that:
 - practices are in place, and will remain in place, at the licensed premises that ensure as far as reasonably practicable that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
 - the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

Community Impact Statement

18. Section 48 of the Act requires that certain applications, including an application for an extended trading authorisation for an on-premises licence seeking to trade between

midnight and 5:00 am, must be accompanied by a CIS prepared in accordance with the liquor legislation.

19. Section 48(5) provides that the Authority may only grant the extended trading authorisation if it is satisfied that the overall social impact of granting the authorisation in respect of an on-premises licence will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter the Authority becomes aware of during the application process.

Provisions specific to an on-premises liquor licence

20. Further legislative provisions specific to on-premises liquor licences are set out in sections 21-28 of the Act and in the Regulation.

Provisions specific to an extended trading authorisation and a primary service authorisation

21. The legal requirements for making a valid application for an ETA are provided by section 51 of the Act and the Regulation. The power to grant an ETA is provided by section 49(2) of the Act.
22. The power to grant a PSA is provided by section 24(3) of the Act. Regulation 19 of the Regulation provides the conditions to which a PSA must be granted.

Key findings

23. Having regard to the information before it and the relevant legislative requirements, the Authority makes the following findings in relation to the Application.
24. Pursuant to sections 51(3) and 40 of the Act, the Authority is satisfied that the Application has been validly made and meets the minimum procedural requirements.
25. However, the Authority is not satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of an on-premises licensed restaurant of the nature outlined in the Application, that is, a licensed restaurant operating with an extended trading authorisation and a primary service authorisation.
26. This conclusion has been reached on the basis of the evidence or material provided by the Marrickville Local Area Command of NSW Police (Police) in its submission dated 28 April 2017. The Police submission outlines the Applicant's compliance history.
27. Briefly, the Authority is satisfied, on the balance of probabilities and taking due care when fact finding, that between 2009 and 2013 the Applicant did contravene the Act on seven (7) separate occasions whilst holding the liquor licence for an on-premises (restaurant subcategory) licensed premises, the *Sun and Moon Restaurant*.
28. These findings are made on the basis of the summary information provided by Police, who refer to the following events recorded on the Computerised Operational Policing System (COPS Reports):
 - **E 50825942** – 11/01/2013 – *Compliance Notice – Licensee Fail to Comply with Conditions of Licence.*

- **E 704379390** – two (2) offences – 07/07/2012 – Infringement Notice – Licensee Fail to Comply with Conditions of Licence – 07/07/2012 – Compliance Notice – Licensee Fail to Comply with Conditions of Licence.
 - **E 46898062** – 31/12/2011 – Verbal Warning – Licensee Fail to Comply with Conditions of Licence.
 - **H 46137823** – 15/10/2011 – Future CAN (Charge) – Licensee etc sell/supply liquor not accord authority (not comply with PSA). Conviction Proved.
 - **E 48185481** – 19/07/2011 – Infringement Notice – Licensee Allow Supervision of Business for more than 6 weeks.
 - **E 42638234** – 04/11/2010 – Infringement Notice – Licensee Fail to Comply with Conditions of Licence.
 - **E 39247227** – two (2) offences – 12/12/2009 – Compliance Notice – Licensee Fail to Comply with Conditions of Licence – 12/12/2009 – Compliance Notice – Licensee Fail to Comply with Conditions of Licence.
29. Police submit that of particular significance to an assessment of the Applicant's probity is charge no. H 46137823, relating to his operation as licensee of Sun and Moon Restaurant in contravention of the authorisation provided by that licence, and by exercising the primary service authorisation granted for that restaurant without complying with the requirements pertaining to the licence. Police submit that the Applicant was convicted of that offence.
 30. Police further contend that while the Applicant was licensee of Sun and Moon Restaurant, "numerous incidents" were "noted" by Police pertaining to "alcohol related violence, brawls, noise complaints, RSA issues, etc" and which required "numerous police involvements and interventions by (St George) Licensing Police".
 31. Police submit, on the basis of "numerous police business inspections over several years", that the Sun and Moon Restaurant was operated while the Applicant was licensee in a manner reflecting an "entertainment venue", with performances by live international bands, "minimal" meal service during early trade and later hours, and "serving predominantly drinks til about 4am" when the venue closed.
 32. Police submit that the licence-related authorisations sought in relation to this Application are similar to those held by the Applicant in respect of the Sun and Moon Restaurant. Police note that the Applicant has expressed the intention, in the Application material, to operate the Premises similarly to the Sun and Moon Restaurant.
 33. Police contend that although the Application states that the new licensed Premises will operate as a "bona fide restaurant", the Applicant's history as an operator of a late-trading licensed restaurant with a PSA, considered in light of the ETA and PSA sought in respect of this Application, suggest that the Premises will more closely resemble a "bar or night club" than a restaurant, should licensed trading be permitted until 3:00am.
 34. Police submit that licensing the Premises until 3:00am with a PSA would pose a "significant risk" to the amenity of community life and the well-being of the surrounding

neighbourhood, particularly given that the Premises is located only 30 metres away from residential dwellings.

35. Police do not in principle object to the venue being operated as a licensed restaurant, but object to the Applicant on the basis that he is not fit and proper to hold a licence.
36. Police further oppose the applications for the ETA and PSA on the basis of “licensed premises saturation” and the level of alcohol related crime within the vicinity of the Premises, combined with the “unmitigated potential” for the venue to operate outside the authorisation conferred by an on-premises (restaurant) licence should those authorisations be granted.
37. The occurrence of the events in question disclosed in the summary information have not been denied, but the subject of brief submissions in mitigation from the Applicant. In an email from Mr Michael Marr, the Applicant’s representative, to Authority licensing staff dated 17 June 2017, the Applicant concedes that the Applicant paid a \$1,000 fine in 2011 when he “returned from overseas 3 days over the statutory limit of 6 weeks” due to “unforeseen circumstances”. It is apparent on the basis of the National Police Certificate dated 7 December 2016 that the conviction for which the Applicant paid this fine was for an offence of *Licensee etc sell/supply liquor not accord authority* (COPS Event H 46137823).
38. The Applicant further submits that the infringement notice in 2010 was the result of a “sign being missing” from the Premises. It is unclear to which, if any, of the COPS Events listed by Police this submission relates.
39. The Authority notes that 2 of the COPS Events listed in the submission from Police were recorded by Police as having occurred in 2012 and 2013, being E 704379390 on 7 July 2012 (two offences of *Licensee failure to comply with conditions of licence*) and E 50825942 on 11 January 2013 (one offence of *Licensee failure to comply with conditions of licence*). The Applicant advises through his representative that his recollection of the prosecution for trading beyond his licence is “sketchy” but attributes the incident to a staff member “inadvertently” advising that the kitchen was closed.
40. The Applicant makes the general submissions that he “takes the responsibility of being a licensee very seriously”; has never been subject to any allegations or breaches related to “intoxication offences, minors offences, overcrowding, violence etc”; that he has made a “significant financial investment” in the new Premises and that he has a “large following of Yugoslav customers”.
41. The Authority does not have before it the full text COPS Reports of the COPS Reported events cited in the Police submission. Notably, Police have not provided supporting evidence or material nor have they specified the nature and timing of the “numerous incidents” that they say required Police engagement with respect to the Applicant’s former licensed business, the Sun and Moon Restaurant. The Authority is required, when making exercising fact finding on fitness and propriety, to exercise some care, in accordance with the principle in *Briginshaw v Briginshaw* 1938 HCA 34.
42. The Applicant does not, however, deny the summary information provided by Police as to COPS Reported adverse events which have been summarised from Police business

records. The Authority accepts that those adverse events did in fact occur, on the basis of the limited information provided.

43. The Authority has considered the Applicant's very brief explanation of his past regulatory contraventions, noting that his submissions are also not supported by any documentary evidence.
44. The Authority is satisfied, on the information provided by Police and the National Criminal History Check dated 7 December 2016, that the Applicant has in fact committed, or was responsible for as licensee on the record, the above COPS Reported contraventions of the liquor legislation while holding the licence in respect of the former Sun and Moon Restaurant.
45. Some of those offences, such as the offence with regard to signage, were relatively minor matters. Others, such as repeated breaches of licence conditions or a failure to operate within the authorisation granted by the licence and primary service authorisation, are more substantial matters.
46. Failing to supervise a licensed venue for more than 6 weeks is another more significant matter. Even though the Authority accepts that the statutory period was only exceeded by a few days while the Applicant was overseas, section 92 of the Act provides a *maximum absence* of 6 weeks and scope for further absence if a licensee seeks the approval of the Authority. The Applicant's inability to comply with that (generous) time frame indicates a degree of laxity in planning and supervision over the former licensed premises. The Applicant does not explain what "unforeseen" circumstances caused the contravention of this requirement, nor why he was not able at the time to notify the Authority of his absence and seek approval.
47. The Authority has also had regard to the timing of those adverse events detected by Police. The Authority notes that the last infringement notices were issued in 2012, with further adverse events were detected in 2013 but those later incidents resulted in the issue of a Compliance Notice (a written warning). Some matters dating back to 2009 are now ageing and this affects the weight given to them when assessing the Applicant's current fitness to hold a licence.
48. The Applicant has claimed that the instances of non-compliance events detected by Police in relation to the Sun and Moon during 2012 and 2013 occurred after the Applicant had ceased to be an employee and after he had "signed" forms transferring him from the licence. The Authority notes that in the Application form for this licence the Application claims that he ceased to be licensee on 1 June 2012.
49. In a very brief submission the Applicant contends that the "occurrences in 2012 and 2013" occurred after he had "transferred the [Sun and Moon Restaurant] licence from his name" and he was "no longer employed at that establishment".
50. Even accepting that the Applicant's employment may have ended in 2012, he had a long-standing association with this business and the Applicant has not explained what steps he took to ensure he was *no longer the licensee on record*. A person may remain as licensee on the record for a number of reasons after ceasing to be an employee. A licensee with an interest in the ongoing success of an operation may

deliberately allow the licence to remain in their name if it is inconvenient (or costly) for the business to appoint a new licensee. Alternatively, a delay in transferring the licence may be the product of an administrative oversight, indicating a lack of diligence on the part of the licensee in ensuring that he is no longer on the record and liable for regulatory non-compliance.

51. The Applicant has not provided any explanation, let alone supporting documentation, as to why he remained licensee on the record during 2012 and 2013 when the further events were detected by the Police. In those circumstances, the Authority accepts the Police contention, made on the basis of Police records, that the Applicant was responsible as licensee for the adverse events attributed to the Sun and Moon Restaurant.
52. [As a post script to this finding, licensing staff have confirmed, during the preparation of this statement of reasons, that Mr Sevic held the licence for the Sun and Moon from 11 December 2008 to 23 May 2013. The licence was cancelled on 25 July 2015.]
53. The Authority accepts the Police submission that the Applicant now proposes to operate a similar type of business to that of the Sun and Moon Restaurant, which was a late trading restaurant with a PSA. The proposed new business, offering live entertainment, a PSA enabling service of liquor without a meal and an ETA enabling licensed trade until 3:00am, will considerably increase the risk profile of the Premises above that of a mere licensed restaurant. These factors will substantially increase the scope for this business to have an adverse impact on local amenity.
54. In conclusion, while the evidence and material before the Authority is insufficient to find the Applicant to be not a fit and proper to hold a licence at this time, there *is* sufficient material to find that the Applicant is not particularly diligent with respect to compliance with licensing legislation. He has not demonstrated the degree of skill or diligence that would give the Authority confidence that he should assume responsibility for (or be in a position to influence) the operation of a 300-patron capacity venue with a PSA and licensed trading until 3:00am.
55. Any licensed premises with a PSA has the potential to operate more in the mode of a bar than a restaurant, particularly outside of peak dining hours when patrons are more likely to be looking for a place to drink alcohol than to eat. Any licensed premises with an ETA enabling late night trading until 3:00am has the capacity to accommodate persons who have been drinking liquor on the premises for a prolonged period, and attract patrons who have been drinking elsewhere before attending the venue.
56. Overall, while the Authority is satisfied for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business to which the licence relates (a restaurant) the Authority is not satisfied that it would be in the public interest to grant the ETA or the PSA.
57. The Authority considers that a substantial period of licensed trading with a sound regulatory history would be warranted before expanding the risk profile of the Premises in the manner proposed by the ETA and PSA Applications.

Overall social impact

58. The social impact test under section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter the Authority becomes aware of during the application process.
59. 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 State suburb of Marrickville.
60. Consistent with the Authority’s longstanding policy to find that the broader community comprises the relevant local government area (LGA), the Authority is satisfied that the broader community is the Inner West LGA which was formed in 2016 as a merger of Ashfield, Leichhardt and Marrickville councils.
61. In the CIS provided with the Application, the Applicant contends that granting the Application with the PSA and ETA sought will have “a minimal impact on the local and broader community”; that the Premises will be “conducted as a bona fide restaurant” and states that the kitchen will remain “fully operational” during all trading hours. The Applicant submits that no “irresponsible liquor promotions” will be offered at the Premises and that the business will “actively target” the “mature-aged market” rather than the “18-25 age bracket”.
62. The Applicant submits that the PSA will be “used at the discretion of the manager” and will benefit patrons by providing the convenience of being able to order an alcoholic beverage without food at “informal social or business meetings outside the lunch and dinner trade”. The Applicant submits that licensed security personnel will be employed during late trading hours to “ensure the appropriate atmosphere remains” and to monitor arriving and departing patrons for signs of intoxication. The Applicant also contends that granting the Application with the PSA and ETA sought will increase “social, business and employment opportunities”, but does not elaborate on what is meant by this contention or what such opportunities will entail.
63. The Authority finds that the operation of a new licensed Balkans-themed restaurant, will provide further choice of dining experience and serve the expectations, needs and aspirations of those in the local and broader community who are seeking this type of central European dining experience. It will advance the statutory objects of section 3(1)(a) of the Act. The Authority also accepts that granting the licence will also (albeit to a modest extent) assist in the development of the music, entertainment and hospitality industries for the purpose of section 3(1)(c) of the Act.
64. The extent of those benefits are constrained by the great many on-premises licensed restaurants servicing the communities, but the benefit of making liquor available as an *ancillary* service to the proposed new restaurant is established.
65. While LGNSW data indicates that licence density for on premises licences is moderately above State-wide rates, the Authority does not accept the Police contention that there is a saturation of liquor licences in Marrickville. There is,

however, substantial cause for concern when assessing the scope for the ETA and PSA applications to have an adverse social impact on the amenity of the local community.

66. ABS SEIFA sourced from the 2011 Census data does not suggest that the communities are exposed to relative socio- economic disadvantage, NSW Health Stats data for 2015 recorded a smoothed standardised separation ratio for alcohol related hospitalisation in the former Marrickville LGA (which incorporated Marrickville and the neighbouring suburbs) at 141.20, substantially above the NSW rate, fixed at 100.
67. BOCSAR crime data for the period from April 2016 – March 2017 on the rate of *alcohol related non-domestic assault* (59.5 per 100,000 persons) indicates that the suburb of Marrickville compares favourably to the New South Wales average (133.9 per 100,000 persons) and this is also the case for *alcohol related domestic assault* (93 per 100,000 persons). Rates recorded in the former Marrickville LGA for alcohol related domestic assault (118.7) and alcohol related non-domestic assault (138.8) were slightly above the NSW rates. Crime data for the former Leichhardt and Ashfield LGAs (both of which form part of the Inner West LGA) are also below NSW rates.
68. However, that data indicated that the former Marrickville LGA was exposed to slightly higher rates of malicious damage to property offences (863.9 per 100,000 persons compared to the rate for NSW as a whole at 816.4. The rate in Marrickville suburb was below but approaching the State-wide rate at 788.5.
69. Notably, BOCSAR crime mapping data for the same period discloses that the Premises is situated within an area of medium density concentration of *domestic and non-domestic assault* events and high-density concentration of *malicious damage events*.
70. That is, while the rates of *alcohol related assault* are generally favourable to the Applicant, there is some concentration of crime and *anti- social conduct* evident within the local community and in particular the location where the Premises proposes to operate late into the night.
71. Aside from the mixed crime data, the Authority finds that, when considered in light of the Applicant's chequered regulatory history, the ETA and PSA Applications pose an unacceptable risk that this substantial new venue will not be managed with a degree of diligence that is commensurate with the elevated risk that will arise from granting each of these authorisations.
72. The Applicant's adverse compliance history poses an unacceptable risk that the supply of liquor will not be managed in a manner than sufficiently manages the increased scope for *adverse alcohol related local amenity impacts* from patrons, affected by liquor to varying degrees, migrating to and from this 300- patron capacity venue, should the ETA and PSA Applications be granted.
73. Outside of peak dining hours, the facility provided by the PSA will likely operate to attract and accommodate substantial numbers of patrons who are simply attending the venue to drink. The ETA will enable the venue to sell or supply liquor for consumption

on the Premises until 3 am, during higher risk times of the day and week for alcohol related crime.

74. The Authority finds it more likely than not that alcohol affected patrons arriving and departing the venue, in significant numbers, late in the evening may give rise to a range of adverse amenity impacts over time - regardless of whether their conduct rises to the level of criminality.
75. Adverse amenity impacts may range from patrons talking loudly among each other, laughing, yelling, arguing and making noise while moving through nearby streets when parking or seeking public or private transport. The later this conduct occurs, at times when most other licensed and non-licensed venues have closed and the neighbourhood is relatively quiet, the greater the scope for unacceptable adverse impact upon local amenity.
76. While the venue is situated in a commercial strip within the Marrickville CBD, it is within close walking distance of residential areas, where patrons are likely to park. In the absence of a substantial trading history of compliant liquor operations on the Premises, the Authority is not satisfied, on the material before it, that granting the PSA or the ETA would satisfy the overall social impact test in respect of the local community for the purposes of section 48(5) of the Act.
77. The Authority has considered the contention made in a letter from Mr R Tesanovic, (the Applicant's accountant) to LGNSW dated 29 May 2017 seeking expedition of a decision on the basis that the Applicant is under "extreme financial hardship" due to the costs of refurbishments at the Premises, rent and retention of staff. The Applicant's financial position is not a sufficient basis to grant the ETA and PSA authorisations if the ETA and PSA Applications do not otherwise satisfy the overall social impact test. If anything, financial pressure may provide another source of tension between the stated object of a bona fide licensed restaurant and a business that operates more in the mode of a bar.

Conclusion

78. The Application for the licence is granted pursuant to section 45 of the Act.
79. The Application for the ETA is refused pursuant to section 49(2) of the Act.
80. The Application for the PSA is refused pursuant to section 24(3) of the Act.
81. The ETA and PSA Applications are both refused on the basis that the Authority is *not* satisfied, for the purpose of section 48(5) of the Act, that the overall social impact of granting the authorisations will not be detrimental to the well-being of the local community of Marrickville.
82. In making these decisions the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to the need to minimise harm associated with the misuse and abuse of liquor (including harm from violence and anti-social behaviour for the purposes of section 3(1)(a) of the Act and the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life for the purposes of section 3(1)(c) of the Act.



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. Application Form for a new on-premises liquor licence seeking primary service authorisation (PSA) and extended trading authorisation (ETA) (application no. APP-0002820775) lodged on 28 March 2017 (Application). The following documents were provided with the Application:
 - a. Category B Community Impact Statement.
 - b. Notice of intention to apply for a liquor licence or a licence authorisation, dated 30 November 2016.
 - c. Local Consent Authority Notice and Public Consultation – Site Notice in relation to the Application, both unsigned and undated.
 - d. Notice of Determination of Development Application No. 279/89, granted by Marrickville Municipal Council on 13 November 1989, approving the use of the Premises as a restaurant with trading hours from 12:00pm to 3:00am daily.
 - e. National Criminal History Check No. 720704-517637 dated 7 December 2016 stating that a search of the national criminal database conducted on Djordje Sevic returned one (1) disclosable court outcome, being a conviction for *Licensee etc sell/supply liquor not accord authority (H 46137823)* dated 12 June 2012, resulting in a fine of \$1,000.
 - f. Copies of ID for Djordje Sevic, being a NSW Competency Card for Djordje Sevic with an expiry date of 7 August 2019; Medicare Card; Heavy Vehicle Driver Licence; and an Australian Passport.
 - g. Plan of the Premises showing the total area sought to be licensed and the area to which the PSA is proposed to apply. The area sought to be licensed encompasses the entirety of the Premises, however no total figure is provided.
 - h. Four photographs of the bar, dining area, entrance and kitchen at the Premises, and copies of the food and beverage menus.
2. Submission to L&GNSW from Sergeant Mark Bazevski and Superintendent Julie Donohue, Marrickville Local Area Command, NSW Police (Police) dated 28 April 2017.
3. Submission to L&GNSW from Jeff Norman, Inner West Council (Council) dated 2 May 2017, attaching a copy of the Local Consent Authority Notice signed by Jeff Norman, Town Planner and dated 28 March 2017, specifying that “development consent is required but not in place” and that Council “cannot locate a consent to operate until 3am”.
4. Certificate of Advertising Application signed by the Applicant and dated 15 June 2017.

5. Email from Authority licensing staff to Jeff Norman, Council dated 20 June 2017 referring to DA No. 279/89 and seeking Council's comment.
6. Email from Jeff Norman, Council to Authority licensing staff dated 20 June 2017 stating that if DA No. 279/89 relates to the "use of the 1st floor as a restaurant", Council agrees that consent is in place for the Premises to operate until 3:00am and Council has no objection to the Application.
7. Email from Ms Sally Hume, Compliance Operations, L&GNSW to Authority licensing staff dated 20 June 2017 stating that the Compliance branch of L&GNSW supports the recommendations of Police in their submission of 28 April 2017.
8. Letter from Mr R Tesanovic, Tesanovic & Associates Tax Agents & Accountants, to L&GNSW dated 29 May 2017.
9. Email from Authority licensing staff to Mr Michael Marr, the Applicant's representative, dated 14 June 2017, seeking responses to various enquiries as to the authorisations sought, consent to licence conditions, and an explanation as to matters outlined by Police in their submission dated 28 April 2017.
10. Email from Mr Marr to Authority licensing staff dated 17 June 2017 providing additional details and documentation, and explaining the Applicant's prior non-compliance with the Act.
11. ASIC Current Company Extract for Marrickville Emporium Pty Ltd dated 17 June 2017, the Premises owner.
12. ASIC Summary of business name details for "Gipsy Kings" showing the registration date as 15 February 2017 and the business name holder as Obren Todorovic.
13. *Plan of Management – Gipsy Kings, Marrickville* dated 15 June 2017.
14. Letter from Mr Goran Denkovski, Australian IT Professionals, to L&GNSW dated 19 June 2017 providing a character reference for the Applicant.
15. Email from licensing staff to Mr Marr dated 19 June 2017 seeking clarification as to whether the trading name for the Premises is "Gypsy Kings" or "Gipsy Kings" and for the Plan of Management to be amended to reflect trading hours commencing from 12:00pm, rather than 10:00am, in line with the DC for the Premises.
16. Email from Mr Marr to licensing staff dated 19 June 2017 asking for the Plan of Management to be amended to reflect trading hours commencing from 12:00pm and the trading name of "Gipsy Kings".
17. Email from licensing staff to Mr Marr dated 20 June 2017 seeking comment on the offence of which the Applicant was convicted in 2012.
18. Letter from Mr Steven Stojanovic, Stojanovic Solicitors, to L&GNSW dated 28 June 2017 providing a character reference for the Applicant.
19. Email from Mr Marr to Authority licensing staff dated 29 June 2017 advising that the Applicant's limited recollection of the 2012 offence.

20. Google Maps and aerial images showing the location of the Premises within the suburb of Marrickville and a map prepared by Authority licensing staff showing the Premises as located within the boundaries of an Alcohol-Free Zone.
21. BOCSAR Crime Maps based upon data from April 2016 to March 2017 detailing hotspots for the concentration of offences near the Premises in Marrickville.
22. LGNSW records as at 3 July 2017 regarding licenced premises and licence density in Marrickville, Inner West LGA and New South Wales.
23. List of licensed premises within the Inner West LGA and the suburb of Marrickville as at 19 June 2017, sourced from LGNSW licensing records.
24. BOCSAR data for the period from April 2016-March 2017 relating to the former (pre-merged) Marrickville LGA and the suburb of Marrickville.
25. NSW Department of Health *Health Stats* Report for alcohol attributable hospitalisations and deaths during 2013-2015 for the former Marrickville LGA.
26. ABS SEIFA data prepared on the basis of the 2011 Census for Marrickville suburb and the former Marrickville LGA.