

<p>Review Applicant</p>	<p>Mr George Isaias c/- Hatzis Cusack Lawyers gc@hatziscusack.com.au</p>	<p>Ms Gabbie Gallagher Director Licensing Liquor & Gaming NSW gabbie.gallagher@liquorandgaming.nsw.gov.au</p>
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20 December 2022

Application No.	APP-0008420254
Application for	Review of a decision made by a delegate of the Independent Liquor & Gaming Authority under section 45(1) of the <i>Liquor Act 2007</i> .
Applicant	
Licence name	Greek Atlas Community Centre
Licence no.	LIQO660036188
Premises	96 Illawarra Road, MARRICKVILLE NSW 2204
Date of decision	2 August 2021
Issue	Whether to confirm, vary or revoke the decision made by a delegate of the Independent Liquor & Gaming Authority under section 45(1) of the <i>Liquor Act 2007</i> on 2 August 2019.
Legislation	Section 36A of the <i>Gaming and Liquor Administration Act 2007</i> , Clause 6(a)(iii) of the Gaming and Liquor Administration Regulation 2016 and sections 3 and 45 of the <i>Liquor Act 2007</i> .

Dear Sir/Madam

**Application for review of decision by a delegate of the Independent Liquor & Gaming Authority
Greek Atlas Community Centre, Marrickville**

On 26 August 2021, the Independent Liquor & Gaming Authority (Authority) received an application for review (Review Application) under section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act) from (Review Applicant).

The Review Applicant was aggrieved by a decision dated 2 August 2021 (Reviewable Decision) made by Mr Kieran McSherry, Team Leader of Licensing, Liquor & Gaming NSW (L&GNSW) in his capacity as a delegate of the Authority (Delegate) and sought to have the decision reviewed.

In the Reviewable Decision, the Delegate decided, pursuant to section 45(1) of the *Liquor Act 2007* (the Act) to grant an on-premises liquor licence for Club activity and support, Social activity and support and Catering service (Licence) in respect of a licensed premises proposing to trade under the licensed business name 'Greek Atlas Community Centre', located at 96 Illawarra Road, Marrickville NSW 2204 (Premises).

On 19 October 2021, the Authority wrote to Hatzis Cusack Lawyers (Licensee's Solicitor) on behalf of the licensee, Mr George Isaias (Licensee), L&GNSW and the Review Applicant, inviting submissions in response to the Review Application.

On 5 November 2021, L&GNSW advised it would not be making a submission in response.

On 15 November 2021, a submission was received from the Licensee's Solicitor on behalf of the Licensee.

On 21 December 2021, a submission was received from the Review Applicant in response.

At its meeting on 16 February 2022, the Authority considered the Review Application, the material before the delegate when making the reviewable decision, the Licensee's submission and the submission in response by the Review Applicant.

In the course of considering the matter, the Authority resolved to defer the matter and seek a further submission from the Licensee regarding the use of the Premises. Additionally, the Authority resolved to seek a submission from Inner West Council (Council) regarding the use of the Premises and its compliance history.

On 24 March 2022, the Authority wrote to the Licensee's Solicitor and Council requesting further information regarding the matter.

On 19 April 2022, the Licensee's Solicitor provided a further submission on the Licensee's behalf in response to the Authority's request.

On 5 October 2022, Council provided a further submission in response to the Authority's request.

At its meeting on 13 October 2022, the Authority further considered the review application, all material before the Delegate when making the Reviewable Decision and all further evidence and submissions that were provided during the review process.

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

Pursuant to section 36A(4) of the GALA Act, the Authority has decided to **confirm** the Reviewable Decision.

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

If you have any questions about this letter, please contact the Office of ILGA via email at office@ilga.nsw.gov.au

Yours faithfully,



Murray Smith

Deputy Chairperson

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

STATEMENT OF REASONS

Background

1. Pursuant to section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act), the Independent Liquor & Gaming Authority (Authority) is authorised to review certain decisions made under the gaming and liquor legislation by delegates of the Secretary of the New South Wales Department of Customer Service (now Department of Enterprise, Investment and Trade) working within Liquor & Gaming NSW (L&GNSW), as well as departmental officers exercising power delegated by the Authority itself.
2. On 26 August 2021, an application for review (Review Application) was lodged by [REDACTED] (Review Applicant) in relation to a decision made by Mr Kieran McSherry, Team Leader of Licensing, Liquor & Gaming NSW (L&GNSW), in his capacity as a delegate of the Authority (Delegate) under section 45(1) of the *Liquor Act 2007* (Liquor Act) on 2 August 2021 (Reviewable Decision).
3. In the Reviewable Decision, the Delegate decided, pursuant to section 45(1) of the Liquor Act to grant an on-premises liquor licence for club activity and support, social activity and support and catering service (Licence) in respect of a licensed premises proposing to trade under the licensed business name 'Greek Atlas Community Centre', located at 96 Illawarra Road, Marrickville NSW 2204 (Premises).

Material considered by the Authority

4. The Authority has considered the Review Application, all material before the Delegate when making the Reviewable Decision and all further evidence and submissions that were provided during the course of this review.
5. The Authority is satisfied, on the basis of the Review Application material, and the decision dated 2 August 2021, that the Review Application was validly made pursuant to section 36A of the GALA Act, which requires that an application for review of a delegated decision be made by a person who was required to be notified of the application and who made a submission to the Authority or Secretary in respect of that application.
6. A list of the material considered by the Authority in making its decision is set out in Schedule A.

Review Application

7. By way of the Review Application, the Review Applicant seeks that the Reviewable Decision be reviewed.
8. The Review Applicant has provided multiple submissions in relation to the original application in which they objected to the granting of the licence and raised the following issues:
 - parking/cars accessing the Premises via the side gate instead of the front gate
 - building modifications and the appropriate consents not being in place
 - noise levels and disturbance on the amenity of the neighbourhood
 - doors/windows to the Premises remaining open contrary to relevant Council consents
 - the Premises not being open to the public and instead being used as a private social club.

Consultation on Review

9. On 19 October 2021, the Authority wrote to Hatzis Cusack Lawyers (Licensee's Solicitor) on behalf of the licensee, Mr George Isaias (Licensee), L&GNSW and the Review Applicant, inviting submissions in response to the Review Application.
10. On 5 November 2021, L&GNSW advised it would not be making a submission in response.
11. On 15 November 2021, a submission was received from Licensee's Solicitor on behalf of the Licensee. The Licensee submitted the following:
 - issues relating to planning approvals were addressed in the original application

- Inner West Council (Council) granted modification approvals in 2019 and 2020
 - a separate liquor plan of management was lodged with the original application and included various additional measures relating to the responsible service of alcohol and other matters
 - there are two points of access to the Premises on 96 Illawarra Road, being the principal entrance from Illawarra Road and the rear entry from Council Street
 - the only persons who enter the Premises from the rear are committee members who park in allocated spaces
 - Council did not raise an objection to the original application
 - Police provided a submission advising that it did not object to the original application.
12. On 21 December 2021, a submission was received from the Review Applicant in response. The Review Applicant reiterated issues raised in their original submission to the Delegate in respect of parking/access to the Premises, noise levels, building modifications, hours of operation and the Premises not being open to the public.
13. At its meeting on 16 February 2022, the Authority considered the Review Application, the material before the Delegate when making the Reviewable Decision, the Licensee's submission and the submission in response by the Review Applicant.
14. In the course of considering the matter, the Authority resolved to defer the matter and seek a further submission from the Licensee regarding the use of the Premises. Additionally, the Authority resolved to seek a submission from Council regarding the use of the Premises and its compliance history.
15. On 24 March 2022, the Authority wrote to the Licensee's Solicitor and Council requesting further information regarding the matter.
16. On 19 April 2022, the Licensee's Solicitor provided a further submission on behalf of the Licensee in response to the Authority's request, which included the following information:
- there is a main library and an ancillary library area where meetings can be held without disturbing persons in the main library
 - signage relating to the library and its operating hours is displayed at both doors to the main library area
 - a list of the facilities provided at the Premises on the ground and first floor, and their associated uses
 - patrons attending the Premises enter via the front gate on Illawarra Road unless they are committee members, who park at the rear of the Premises
 - the front door remains closed other than when events are held on the first floor with patrons entering via that door on those occasions
 - patrons can access the licensed area by entering via Illawarra Road, walking down the pathway to the side of the building and then entering the covered outdoor and lounge area that comprise the licensed area
 - there is a stairway from the licensed area that leads to a doorway to the library and other areas
 - an acoustic report accompanied the 2019 modification application and all recommendations have been implemented, including the installation of magnetic acoustic screens to the first-floor windows and limitations on patron numbers and trading hours in certain areas
 - the Premises operates in accordance with its plan of management, approved by Council and the Authority

- the on-street parking in Council Street is not subject to time limits set by Council
 - there is various on-street parking in and around the area for use by patrons of the Centre who arrive and depart by car in addition to Council Street
 - a Traffic Impact Assessment Report previously filed with Council noted there was ample on-street parking available for patrons of the Centre, including of an evening
 - the Premises has had a long-standing use as a venue catering for various functions and events
 - relatively small numbers of persons attend the Premises and at events when they are held on the first floor on an intermittent basis.
17. On 5 October 2022, Council provided a further submission in response to the Authority's request, which included the following information:
- the Premises development consent allows it to be used as a restaurant and for social activities
 - Council is unaware of the Premises being used for catering services
 - there are no outstanding compliance matters regarding the use of the Premises.

Legislative framework

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

Reasons

19. The Authority acknowledges the Review Application raised by the Review Applicant and notes their concerns relating to parking and access, noise disturbance, compliance with Council approvals and the use of the Premises.
20. The Authority notes that L&GNSW has not provided a submission due to it being satisfied with the rationale behind the Reviewable Decision, which has been clearly documented and set out in a statement of reasons on the L&GNSW website.
21. The Authority notes the Licensee's submission that the Premises is being operated in accordance with its licence conditions, plan of management and relevant Council approvals, including modification applications and noise related mitigation measures.
22. The Authority notes the Licensee's submissions regarding access to the Premises, parking facilities near the Premises, the closing and opening of doors and windows to the Premises, and the operation of the Premises' facilities.
23. The Authority notes Council's submission regarding the Premises' use and that there are no outstanding compliance matters regarding the use of the Premises.
24. The Authority notes the Licensee's submission the Premises has been catering for various functions and events over a prolonged period of time, that events are held on an intermittent basis on the first floor and that the numbers of patrons at these events is relatively small.
25. The Authority notes the business model of the Premises, which alongside its regular community offering, presents a unique experience for the Premises' members to socialise, enjoy a meal and/or a social drink. This aligns with the Licence's business types, being catering service, club activity and support, and social activity and support.
26. The Authority has formed the view that the concerns of the Review Applicant are sufficiently addressed.

27. It is the Authority's position that, given the above considerations, the original decision by the Delegate to grant the Licence was warranted.

Conclusion

28. In accordance with section 36A(4) of the GALA Act, the Authority has decided to **confirm** the Reviewable Decision made by the Delegate.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Murray Smith', is written in a cursive style.

Murray Smith

Deputy Chairperson

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

Schedule A – Material considered by the Authority

Material before the Delegate

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

1. Current Company Extract for Atlas Hall Pty Ltd, dated 24 February 2021.
2. Declaration: Liquor licence application by proposed licensee, Mr George Isaias, dated 15 March 2021.
3. Application for small bar liquor licence, lodged by the Licensee, Mr George Isaias, dated 18 March 2021.
4. National Coordinated Criminal History Check Certificate, dated 21 March 2021.
5. Submission from a member of the public dated 25 March 2021.
6. Submission from a member of the public dated 27 March 2021.
7. Submission from a member of the public dated 27 March 2021.
8. Submission from a member of the public dated 27 March 2021.
9. Submission from a member of the public dated 4 April 2021.
10. Submission from a member of the public dated 7 April 2021.
11. Submission from a member of the public dated 13 April 2021.
12. Submission from a member of the public dated 16 April 2021.
13. Liquor Plan of Management for Greek Atlas Community Centre dated May 2021.
14. Signed Certification of Advertising for the licence application, signed by the Licensee's Solicitor on 14 May 2021.
15. Submission from Hatzis Cusack Lawyers on behalf of the Licensee dated 2 June 2021.
16. Inner West Council Notice of Determination – Approval for DA1994/383 dated 9 July 2020.
17. Various correspondence between L&GNSW and the Review Applicant between 26 March 2021 and 13 July 2021.
18. Submission from NSW Police dated 28 July 2021.
19. Liquor & Gaming LiveData Report dated 28 July 2021.
20. Submission from Hatzis Cusack Lawyers on behalf of the Licensee dated 30 July 2021.
21. Decision of the Delegate dated 2 August 2021.
22. Liquor Licence for Greek Atlas Community Centre dated 2 August 2021.
23. L&GNSW Application Assessment Checklist and Delegate Determination dated 2 August 2021.
24. Correspondence between L&GNSW and the Hatzis Cusack Lawyers regarding the application between 2 June 2021 and 2 August 2021.
25. Correspondence between L&GNSW and NSW Police between 28 July 2021 and 4 August 2021.
26. Liquor Licence for Greek Atlas Community Centre dated 4 August 2021.
27. Plan/diagram of the Premises highlighting the proposed licensed area.
28. Copies of the Licensee's Passport, NSW Drivers Licence and Medicare Card.
29. Three handwritten letters from members of the public regarding the application, undated.

Review Application material

The Review Application Form was filed on 26 August 2021 and included email correspondence from the Review Applicant dated 31 August 2021. The following material was attached:

1. A copy of the Reviewable Decision dated 2 August 2021.
2. Email to L&GNSW and Hatzis Cusack Lawyers inviting submissions dated 19 October 2021.
3. Response from L&GNSW dated 5 November 2021.
4. Submission from Hatzis Cusack Lawyers on behalf of the Licensee dated 15 November 2021.
5. Submission from Review Applicant dated 21 December 2021.
6. Email to Review Applicant regarding daily correspondence dated 24 January 2022.
7. Liquor Licence for Greek Atlas Community Centre dated 2 February 2022.

Supplementary material in response to Review Application

1. Letter from the Authority to the Premises requesting further information dated 23 March 2022.
2. Email from the Authority to Inner West Council requesting further information dated 23 March 2022.
3. Submission and supporting material provided by Hatzis Cusack Lawyers on behalf of the Premises dated 19 April 2022.
4. Submission provided by Inner West Council dated 5 October 2022.

Schedule B - Legislative framework

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

3 Objects of the Act

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

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