



Ms Ellie Yoo
LAS Lawyers & Consultants
PO Box K1077
Haymarket NSW 1240
e.yoo@laslawyers.com.au

20 December 2019

Dear Ms Yoo,

Application No.	1-7457739687
Applicant	Mr Troy McFarlane-Child
Application for	Vary existing extended trading authorisation
Licence Name	Royal Sheaf Hotel
Approved Trading Hours	<u>Consumption on premises – Verandah, Gaming Room, Amenities, Corridor to Burwood Road, Part of the TAB/Lounge area</u> Monday to Saturday 10:00 AM to 4:00 AM Sunday 10:00 AM to 12:00 Midnight <u>Consumption on premises – Other areas within licensed premises</u> Monday to Saturday 5:00 am to 12:00 midnight Sunday 10:00 am to 10:00 pm <u>Take away sales</u> Monday to Saturday 5:00 AM – 10:00 PM Sunday 10:00 AM – 10:00 PM
Premises	231 Burwood Road Burwood NSW 2134
Legislation	Sections 3, 11A, 12, 14-17, 48, 49, 51 and 53 of the <i>Liquor Act 2007</i> (NSW)

**Decision of the Independent Liquor and Gaming Authority
Application to vary an extended trading authorisation – The Royal Sheaf Hotel**

The Independent Liquor and Gaming Authority (“Authority”) considered the above application at its meeting of 13 November 2019 and after further consultation has decided on the date of this letter to vary the extended trading authorisation (“ETA”) pursuant to section 51(9)(b) of the *Liquor Act 2007* (NSW) (“Act”).

The Hotel currently has an ETA that permits it to trade until 3:00 am Monday to Saturday and 10pm on Sunday in the function area, lounge, TAB, gaming room, verandah and amenities. The Applicant seeks to vary the ETA so that it shall apply to the verandah, gaming room, amenities, corridor to Burwood Road and part of the TAB/lounge area as marked on the plan provided as Appendix F to the Applicant’s Plan of Management dated September 2019. It will permit the hotel to sell liquor for consumption on the premises in the areas subject to the Application between Midnight and 4:00 am on Monday to Saturday and between 10:00 pm and 12:00 midnight on Sunday.

The Authority determined to impose the following conditions on the hotel licence, to operate in conjunction with the existing conditions:

1. The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre (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. For the purposes of this condition the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.

2. The licensee or its representative must join and be an active participant in the local liquor accord.
3. The premises is to be operated at all times in accordance with the Plan of Management dated September 2019 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
4. Security guards must be engaged as follows:-
 - (a) Monday to Saturday
 - (i) One (1) security guard from 08:00pm until half an hour after the close of business.
 - (ii) A second security guard will be engaged from 10:30pm until half an hour after the close of business. This security will be patrolling the hotel and carpark to ensure leaving patrons do not have any adverse impact on surrounding residents.
 - (b) Sunday
 - (i) One (1) security guard will be engaged from 08:00pm until half an hour after the close of business.
5. **Incident Register**
 - 1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:
 - (a) any incident involving violence or anti-social behaviour occurring on the premises,
 - (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
 - (c) any incident that results in a person being turned out of the premises under section 77 of the Liquor Act 2007,
 - (d) any incident that results in a patron of the premises requiring medical assistance.
 - 2) The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:
 - (a) make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and
 - (b) allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises.
 - 3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

6. **Crime Scene Preservation**

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:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) 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 and Gaming NSW website,
- 3) make direct and personal contact with NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.
- 5) In this condition, 'staff member' 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.

7. **CCTV**

- 1) 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 a 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:
 - (i) all entry and exit points on the premises,
 - (ii) the footpath immediately adjacent to the premises, and
 - (iii) all publicly accessible areas (other than toilets) within the premises.
- 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - (c) 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.

8. If the local consent authority does not approve the continuation of the trial period in the development consent after 05 July 2020 (or as may be extended from time to time), the trading hours of the premises will revert to 10:00 AM to 03:00 AM Monday to Saturday, and 10:00 AM to 10:00 PM Sunday.

A copy of the relevant development consent is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor & Gaming inspector, or any other person authorised by the Independent Liquor & Gaming Authority.

9. The business authorised by this licence must not operate with a greater overall level of social impact on the well-being of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of varying the extended trading authorisation on 26 November 2019.

Takeaway trading between 10:00 pm and 11:00 pm Monday to Saturday

The hotel's licence record indicates that the hotel is currently permitted to sell liquor for consumption off premises between 5:00 am and 11:00 pm Monday to Saturday and 10:00 am to 10:00 pm Sunday.

Pursuant to sections 12 and 49 of the Act, a hotel may only be licensed to sell takeaway liquor until 10:00 pm on all trading days. Nevertheless, the exemption under clause 117 of the *Liquor Regulation 2018* (NSW) (“Regulation”) permits 10:00 pm licensed premises to continue to sell liquor for consumption off the premises between 10:00 pm and 11:00 pm on days other than Sundays and restricted trading days.

Pursuant to section 53(2) of the Act, the Authority has amended the takeaway hours recorded on the licence to read 5:00 am to 10:00 pm Monday to Saturday and 10:00 am to 10:00 pm Sunday. However, the hotel will still be permitted to sell liquor for consumption off premises between 10:00 pm and 11:00 pm Monday to Saturday in accordance with clause 117 of the Regulation.

Concise statement of reasons

A concise statement of reasons for the application is enclosed with this letter. In the interest of efficient finalisation of matters in a high-volume liquor and gaming jurisdiction, the Authority will only produce a more detailed statement of reasons for applications that are refused, partially approved or the subject of stakeholder objections.

A concise statement of reasons is produced for non-contested applications that have been approved by the Authority, in cases where a statement of reasons is required to be published for the application under section 36C of the *Gaming and Liquor Administration Act 2007* (NSW).

The Authority notes that, at the time of lodging this application, the published Application Form AM0020H *required* an application to vary an ETA to be accompanied by a Category B Community Impact Statement (“CIS”). Pursuant to section 48(2)(f) of the Act, the Authority treats this application as a “relevant application”, requiring publication of reasons in this case. (The Authority notes that the Application Form has since changed to no longer mandate a CIS).

If you have any questions, please contact lucas.ho@liquorandgaming.nsw.gov.au.

Yours faithfully



Murray Smith
Deputy Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Concise statement of reasons

Key facts

Application No.	1-7457739687
Applicant	Troy McFarlane-Child (“Applicant”)
Application for	Vary an existing extended trading authorisation (“ETA”)
Licence Name	Royal Sheaf Hotel
Approved Trading Hours	<u>Consumption on premises – Verandah, Gaming Room, Amenities, Corridor to Burwood Road, Part of the TAB/Lounge area</u> Monday to Saturday 10:00 AM to 4:00 AM Sunday 10:00 AM to 12:00 Midnight <u>Consumption on premises – Other areas within licensed premises</u> Monday to Saturday 5:00 am to 12:00 midnight Sunday 10:00 am to 10:00 pm <u>Take away sales</u> Monday to Saturday 5:00 AM – 10:00 PM Sunday 10:00 AM – 10:00 PM
Premises	231 Burwood Road Burwood NSW 2134 (“Premises”)
Application date	7 August 2019
Decision	Grant the variation of the ETA under section 51(9)(b) of the <i>Liquor Act 2007</i> (NSW) (“Act”)
Decision date	26 November 2019

Material considered by the Independent Liquor and Gaming Authority (“Authority”)

- Application material for the variation of the ETA (“Application”), including evidence of notification to specific stakeholders and the community, lodged on 7 August 2019.
- Category B community impact statement (“CIS”) dated 5 August 2018 including additional information on Part 7 of the CIS Form, Plan of Management dated March 2019, survey of hotel patrons, Notice of Intention to apply for liquor licence or a licence authorisation dated 26 June 2019, map depicting the 100 metre CIS consultation zone, letters sent to stakeholders notifying them of the application dated 26 June 2019, submission letter from NSW Roads and Maritime Services dated 2 July 2019, submissions from Burwood Council (“Council”) dated 19 July 2019 and 3 July 2019, judgement/order of the Land and Environment Court of NSW in *Nelmeer Hoteliers Pty Limited v Burwood Council* dated 5 July 2019 including Annexure A, Australian Bureau of Statistics (“ABS”) 2016 Census Quickstats data for Burwood Local Government Area (“LGA”) and patron profile survey.
- Premises plan providing a diagram of the boundary of the current licensed area, the current authorisations and the proposed ETA.
- Plan of Management dated September 2019 and Appendices A to F.
- Gaming Machine Plan of Management dated October 2019.

- Decision of the Land and Environment Court NSW in *Nelmeer Hoteliers Pty Ltd v Burwood Council* [2019] NSWLEC 1315 dated 5 July 2019 including Annexure A.
- Decision of the Land and Environment Court of NSW in *Nelmeer Hoteliers Pty Ltd v Burwood Council* No. 10572 of 2006 dated 29 November 20016 including Annexure A.
- Section 96 modification of development application 174/2008 determined by Council on 13 June 2018.
- Development approval 174/2008 determined by Council on 23 September 2008.
- Certificate of Advertising signed by the Applicant and dated 1 October 2019.
- Stakeholder submissions from Police dated 12 September 2019 and Liquor and Gaming New South Wales (“LGNSW”) Compliance dated 2 September 2019.
- Correspondence between licensing staff and the Applicant between 15 October 2019 and 30 October 2019 addressing submissions and providing additional information.
- Onegov licence record for the hotel as at 16 October 2019.
- Statistics sourced from LGNSW, Bureau of Crime Statistics and Research (“BOCSAR”), NSW Health and ABS in respect of the socio-economic status, liquor licence density, alcohol-related crime rates, and health issues in the relevant local and broader communities.
- Google geographical maps depicting the location of the Premises.
- Additional correspondence between licensing staff and the Applicant dated 19 November 2019 clarifying the area proposed to be covered by the ETA and 16 December 2019 clarifying the size of the area currently covered by the ETA.

Legislative requirements

The Authority has considered the Application having regard to the following sections of the Act, and the associated clauses of the *Liquor Regulation 2018* (NSW) (“Regulation”):

- Section 3: Statutory objects of the Act and relevant considerations.
- Section 11A: 6-hour closure period.
- Section 12: Standard trading period.
- Sections 14-17: Specific provisions in respect of a hotel licence.
- Section 48: Requirements in respect of a CIS.
- Section 49: General provisions in respect of an ETA.
- Section 51: General provisions relating to licence-related authorisations.
- Section 53: Provisions relating to licence conditions

The Authority has also had regard to its *Guideline 6* when considering the overall social impact of granting the Application pursuant to section 48(5) of the Act.

Key findings

In accordance with Guideline 6, the Authority finds that the relevant local community for the purposes of the overall social impact test is the suburb of Burwood, and the broader community is the LGA of Burwood Council (“Burwood LGA”).

Key legislative requirements

The Authority finds that:

- The Application and CIS meet minimum procedural and information requirements under sections 48(4) and 51(1) of the Act and clauses 20 through 29 of the

Regulation on the basis of the Application and CIS material and the Certificate of Advertising dated 1 October 2019.

- The Authority notes that the proposed variation of the ETA falls within the scope of hours that may potentially be granted to a hotel premises having regard to sections 11A, 12, 14 and 49 of the Act. The Authority notes that this licence is not currently subject to a liquor cessation period pursuant to section 11A of the Act and that varying the pre-existing ETA will not affect this.

Positive social impacts

The Authority notes the information provided in the CIS and accepts that the Applicant is seeking to vary the ETA in order to allow patrons to further enjoy the hotel's services and amenities during late trading hours.

The Applicant contends that varying the ETA will "in fact have a positive impact on the community by promoting business diversity, providing greater employment opportunities, and providing a leisure and passive entertainment venue to service the growing demand in the area". The Applicant contends that the variation of areas in which the hotel may trade late will "provide a quiet environment" where "existing patrons" can "enjoy the facilities and services" for longer "for therapeutic benefits".

The Authority is satisfied that varying the ETA as requested, will provide some additional convenience for persons who wish to remain on the Premises and utilise the licensed services provided by the hotel later into the evenings.

In the absence of any community opposition to the proposal, the Authority is satisfied that varying the ETA will advance, to a modest extent, the expectations needs and aspirations of the community in furtherance of the statutory object in section 3(1)(a) of the Act. However, this benefit is somewhat constrained by the existing number of licensed venues in the suburb that are subject to late trading hours. The three club licensed premises in the suburb have unrestricted trading hours and of the five hotel licences (with one being the subject of this application), four have extended trading hours.

Negative social impacts

The Authority accepts that the extended trading hours may contribute to alcohol-related adverse social impacts affecting the local and broader communities. Having regard to the risk factors identified in Authority Guideline 6, the following risk factors are adverse to an assessment of the overall social impact of varying the ETA:

- The hotel will be permitted to trade until 4:00 am across an area of the Premises comprising some 416 square metres in which 30 gaming machines operate. (The Authority notes that the venue currently trades until 3:00 am in an area of around 1,511 square metres, including the outdoor area).
- While an ETA is already in place, the Applicant seeks an extension of late trading hours.
- Some moderate cause for concern arises from the location of the Premises in a low-density hotspot for incidents of malicious damage to property as evidenced by BOCSAR hotspot maps from July 2018 to June 2019.
- Some moderate cause for concern arises from the elevation of alcohol attributable hospitalisations at the level of the broader community, with Healthstats data recording

a spatially adjusted rate per 100,000 persons of 733.4 for the LGA compared to 555.6 for NSW between 2016 and 2018.

The Authority has considered and given some weight to the concerns raised by Police in their 12 September 2019 submission regarding the responsible service of alcohol, responsible conduct of gambling, the lack of public transport, the increased risk of alcohol related violence/anti-social behaviour and increased risk of robberies associated with late trading. The Authority has also considered information regarding incidents that have occurred on the Premises in the past prior to the appointment of the current licensee.

However, Police were not moved to oppose the Application and the Authority has given some weight to this when considering the relative risk of adverse social impact.

The Authority is satisfied that the following mitigating factors are apparent when considering the scope for adverse social impact from granting the Application:

- The suburb and LGA are not experiencing elevated crime rates according to BOCSAR crime data for the year to June 2019.
- ABS Socio-Economic Indexes For Areas data based on the 2016 census indicates that the suburb ranked in the 8th decile and the LGA in the 9th decile on the Index of Relative Socio-Economic Advantage and Disadvantage. That is, socio economic disadvantage is not a compounding factor of concern when assessing the scope for adverse alcohol related social impacts.
- Alcohol attributable deaths in the LGA are below the NSW rate with the Healthstats data recording a spatially adjusted rate per 100,000 persons of 15.5 for the LGA compared to 18.1 for NSW between 2015 and 2016.
- No objections were received from residents or key stakeholders who were notified of the Application.
- The licence will be subject to the harm minimisation provisions set out in the Plan of Management dated September 2019 (which will be enforceable by way of a licence condition) and set out in the Gaming Machine Plan of Management dated October 2019.

Overall Social Impact and Conclusion

Having considered the positive and negative social impacts that are likely to flow from the Applicant's proposal, and notwithstanding the presence of some risk factors posed by the temporal extension of the ETA, the Authority is satisfied that the overall social impact of approving the variation to the ETA will not be detrimental to the well-being of the local or broader community for the purposes of section 48(5) of the Act.

Accordingly, the Authority grants the Application pursuant to section 51(9)(b) of the Act.



Murray Smith
Deputy Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* (NSW) 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 the New South Wales Civil and Administrative Tribunal ("NCAT") for an administrative review under the *Administrative Decisions Review Act 1997* (NSW).

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.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions> 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/>.